DOCUMENT RESUME

ED 445 850 RC 022 615

TITLE	Report on Tribal Priority Allocations.
INSTITUTION	Bureau of Indian Affairs (Dept. of Interior), Washington, DC.
PUB DATE	1999-07-00
NOTE	166p.; Some graphics may not reproduce adequately.
AVAILABLE FROM	Full text at BIA Web site: http://www.doi.gov/bia/tpa/TPARept.pdf.
PUB TYPE	Reports - Evaluative (142)
EDRS PRICE	MF01/PC07 Plus Postage.
DESCRIPTORS	*American Indians; Disadvantaged; Elementary Secondary Education; *Federal Indian Relationship; *Federal Programs; *Financial Support; Postsecondary Education; Tables (Data); Tribal Government; Tribal Sovereignty; *Tribes; Trust Responsibility (Government)
IDENTIFIERS	*Bureau of Indian Affairs; *Tribal Management

ABSTRACT

As part of Bureau of Indian Affairs (BIA) funding, Tribal Priority Allocations (TPA) are the principal source of funds for tribal governments and agency offices at the reservation level. According to their unique needs and circumstances, tribes may prioritize funding among eight general categories: government, human services, education, public safety, community development, resources management, trust services, and general administration. In 1997, Congress directed the BIA to examine options on other methods of distributing TPA funds based on identified tribal need. This report summarizes findings of a BIA/tribal workgroup on this issue. Chapter 1 describes background issues: wide variations among Indian tribes and lands that impede development of one funding formula; American Indians' severely disadvantaged status; Federal trust responsibilities to Indians; and the right of tribal governments to have their priorities respected. Chapter 2 recounts the historical and legal basis for federal services to tribes. Chapter 3 discusses measures of tribal need and finds that current funding meets only one third of identified needs. Chapter 4 covers measures of tribal revenue, noting that revenue must be used not only for current operations but also to repair 150 years of neglect. Chapter 5 presents results of tribal consultation. There is no support for reallocation of resources, and given that fewer than 10 percent of tribes have enough revenue to provide a full range of services to their citizens, reallocation of base funds is not cost effective. Chapter 6 presents conclusions: base funding to tribes should not be redistributed; the same principles for determining state and local eligibility for federal funds should be applied to tribes; and an appeal process must be established for tribes affected by any change in TPA policies. Appendices describe TPA programs and list federal domestic assistance programs for which tribes may or may not apply. (TD)

Reproductions supplied by EDRS are the best that can be made
from the original document.

ED 445 850

REPORT ON TRIBAL PRIORITY ALLOCATIONS

1824

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☑ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
- Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

JULY, 1999

BEST COPY AVAILABLE

RC 022615

EXECUTIVE SUMMARY

Pursuant to Congressional direction given in the FY 1999 appropriations (Senate Report 105-56), as well as other Congressional action attempted in the 105th Congress, the Congress has clearly conveyed its concern for the distribution of Tribal Priority Allocations (TPA) funds to Federally recognized Tribes in our Nation. TPA provides the principal source of funds for local units of Tribal Governments and agency offices at the reservation level. Under Congressional directions, the BIA has been directed to provide options on other methods of distributing TPA funds based on the identified need of a Tribe; however, it provided no definition of "need" or other standards in which to measure need. Yet, it is recognized that both Tribal governments and the BIA must accurately identify and gather data to support funding requests for Tribal programs.

In response, the BIA joined with Tribal Leaders representative of the 12 Areas of the BIA across the Nation to address the issue of funding need relative to the distribution of TPA funds. In January, 1998, this joint effort was formalized through the establishment of the BIA/Tribal Workgroup on Tribal Needs Assessment. As TPA is the core funding provided by the BIA to Tribes to assist in the operation of their Tribal governments, this was a crucial and precedent-setting task undertaken by both the BIA and the Tribes. The Workgroup recognized that the task at hand must include consideration of factors that are historical, objective, and to some degree, subjective in nature. Further, it is recognized that while the Congress wishes to base distribution of TPA funds solely on a needs basis, it should be noted that while many Tribes view current Federal funding as inadequate to meet their needs, they also view Federal funds as representative of the Federal trust responsibility and commitment to the American Indian and Alaska Native.

The Workgroup, comprised of BIA and Tribal representatives, included both policy and technical members. To address the daunting task, the Workgroup established key focus areas, including:

- National budget overview of Indian programs:
  - Identify consistent criteria (by program) to assess current "unmet need";
  - Identify and compare data to national standards;

- TPA:
  - Identify consistent criteria (by program) of current TPA funding levels; and,

- Scope and Definition of Federal obligation to Indian Tribes, i.e., based on legal status, treaties, statutes, and Executive Orders.

The Workgroup met on almost a monthly basis since January, 1998, to March, 1999, formulating the report.

Following are the Chapter Summaries of the *Report on Tribal Priority Allocations*:

Chapter 1 - Background

- The wide variations among Indian Tribes and the lands on which they live present significant impediments to development of one or more funding formulas.
- Based upon a range of socio-economic indicators, Indian people remain severely disadvantaged compared to the U.S. population as a whole.
- Federal Indian policy places both a legal and a moral duty on the Bureau of Indian Affairs to fulfil the Federal trust responsibilities.
- Legislative authorities lack specific programmatic goals and prohibit imposition of standards and reporting requirements which would be required for any for Tribe-by-Tribe comparison.
- TPA base budgets are a result of history, geography, policies, politics, and timing.
- Tribal Governments, no less than any state or local government, deserve to have their priorities respected.

Chapter 2 - Historical and Legal Basis for Services to Tribes

- TPA programs are founded on and result from a complex and lengthy statutory and historical bases.
- TPA is the embodiment of the policy of Self-Determination and is intended to implement the unique obligations of the United States arising from its relationship with the indigenous Indian Tribes.
- The Congress has on occasion experimented with policies that were intended to materially (and unilaterally) alter the Federal/Tribal relationship.
- The Congress has consistently returned to the concept of dealing with the Tribes as governments and has consistently reaffirmed its obligations to the Tribes.

Chapter 3 - Measures of Tribal Need

- Preliminary indications are that current funding meets only one-third of identified need.
- 18 Tribes nearly match the BIA support for local government services.
- Eight Northern Pueblos propose community involvement in shaping needs determination.

Chapter 4 - Measures of Tribal Revenue

- There is no statutory or regulatory requirement for Tribal Governments to report all income.
- Single Audit reports are available for only half of the Tribes; these audits contain varying amounts of information on non-Federal revenues.
- Income derived from trust lands and resources cannot be segregated from other income.
- In an effort to create more employment opportunities, Tribes often operate businesses at a loss.
- Gaming profits range from less than $1 per member to over $500,000 per member.
- Revenue must be used not only for current operations, but also to repair 150 years of general neglect of Indian people and Indian reservations.

Chapter 5 - Results of Tribal Consultation

- Tribal Governments wish to exercise independent decisions on the composition of base budgets.

- Tribal Governments are far more concerned by the unequal status of Indian people as a group compared to the Nation as whole than they are about any perceived or real inequities among Tribes.
- The BIA does not have the ability to accurately maintain, manage, and report performance data for all Tribes.
- There are conflicts between the laws passed by the Congress in providing Tribal flexibility in program administration and priority setting and the information requested by the Congress as to how Federal funds are being used by Tribes.
- Refinement of Small Tribes Initiative is required for extremely small Tribal populations.
- There is no support for reallocation of existing resources.
- Fewer than 10 percent of Indian Tribes have realistically achieved a revenue stream which would allow them to provide a full range of services to their citizens. Given relative small proportion of BIA funds that would be available from the TPA base of these Tribes to meet the overwhelming needs of other Tribes and the significant increased administrative workload which would require additional BIA staff, reallocation of base funds does not represent a cost effective solution to meet the needs in Indian Country.

Chapter 6 - Conclusions

- Base funding to Tribal Governments should not be redistributed.
- The Federal Government does not apply means tests to State and Local Governments. These governments are eligible for Federal funds because of their status as governments; the same principle should apply to Tribal Governments.
- Additional detail in the BIA budget presentations may improve understanding of Tribal program operations.
- Incentives may prove a cost effective method to encourage development of shared service delivery among small Tribes.
- If the Congress changes the current TPA policies and procedures, an appeal process must be established for those Tribal Governments affected by such a change.

Table of Contents

Introduction - Requirements of Section 129 1

Chapter 1- Background 3
  The Bureau of Indian Affairs 3
  BIA's Constituency 5
  BIA Programs 6
  Program Standards 9
  Use of TPA Funds 10
  Reporting 10
  BIA Budget Structure and Funding 11
  Tribal Priority Allocations - Process and Implications 13
  Tribal Priorities 14
  Reallocation of TPA Cannot be based on Simple Single Criteria 15
  Source of TPA Funding Data 15
  TPA Funds Included in the Analysis 16
  Self-Governance Compacts 16
  Consolidated Tribal Government Programs 16
  Human Services Funds 17
  Population Data 17
  Natural Resources Funds 17
  Indian Trust Lands Data 18
  Distribution of TPA Funds to the Twelve Areas, with Self Governance Compacts Included in Each Area 18
  Distribution of TPA Funds 19
  Distribution of Natural Resource Funds 22
  Distribution of TPA Funds to the Twelve Areas, and to Self Governance Compacts as a "13th" Area 24
  Allocating Self Governance Compact Funds to Program Categories 25
  Distribution of Human Services Funds to the "13th" Areas 25
  Human Services Funds on a Per-Person Basis 26
  Distribution of Natural Resources Funds to the "13th" Areas 28
  Reasons for Variation in Base Funding 31
  BIA Agency Offices 31
  Congressional Add-ons 32
  Programmatic Factors 32
  Demographic Factors 33
  Legal Obligations 33

Newly Recognized (or Acknowledged) Tribes . . . 33
Small Tribes Distribution . . . 33
Self-Determination and Self-Governance . . . 33
Chapter Summary . . . 35

Chapter 2 - Historical and Legal Basis for Services to Tribes . . . 36
Introduction . . . 36
Major Federal Indian Policies . . . 37
Removal Policy (1800-1880's) . . . 38
Assimilation Policy (1887-1934) . . . 38
Reorganization Policy (1934-1953) . . . 39
Termination Policy (1953-1960) . . . 40
Policy of Tribal Self-Determination (1960 to Present) . . . 41
Fulfillment of Federal Responsibilities to Tribes Through the TPA Process . . . 44
Chapter Summary . . . 46

Chapter 3 - Measures of Tribal Need . . . 47
Table 1 - National Unmet Tribal Needs Summary . . . 49
Table 2 - Preliminary Comparisons of Tribal Needs Non-Base Funding Summary . . . 50
Table 3 - Human Services . . . 51
Indian Child Welfare Act . . . 51
Services to Children, Elderly and Families . . . 52
Table 4 - Public Safety and Justice . . . 52
Tribal Courts . . . 53
Table 5 - Consolidated Report of Preliminary Need and Tribal Supplement Of 18 Tribes Sampled . . . 53
Eight Northern Pueblos Pilot . . . 54
Chapter Summary . . . 55

Chapter 4 - Measures of Tribal Revenue . . . 56
Single Audits . . . 57
Scope of this Review . . . 58
Conclusions on Single Audits . . . 59
Concerns about Tribal Revenue Use . . . 59
Losses From Tribal Enterprises . . . 60
Fluctuations in Profitability . . . 60
Long-Term Debt . . . 60
Net Revenues . . . 60
Retained Earnings . . . 61
Tribal Gaming Revenues . . . 61
Average State Per Capita Expenditures by Local Governments by Funding

Source (Table) 63
Gross Net Gaming Revenues (Table) 63
Net Revenues Per Member (Table) 64
Chapter Summary 66

Chapter 5 - Results of Tribal Consultations 67
Chapter Summary 88

Chapter 6 - Conclusions 89
Chapter Summary 94

Appendices:

1 Description of Major Federal Programs by Budget Category 95
2 1998 Catalog of Federal Domestic Assistance (CFDA) Programs Which Indicate That Federally Recognized Indian Tribal Governments May Apply 99
1998 Catalog of Federally Domestic Assistance (CFDA) Programs State/Local Government Eligibility Appears to Exclude Indian Tribes 112
3 Tribal Priority Allocations (TPA) Standards 117
Tribal Government 117
Human Services 119
Education 120
Public Safety and Justice 122
Community Development 124
Resource Management 125
Trust Services 132
Tribal Priority Allocations (TPA) - NON-BASE FUNDING 135
4 Tribal Leaders Letter (includes BIA Report Outline) 136
5 BIA/Tribal Workgroup on Tribal Needs Assessment -Membership 141

INTRODUCTION

Requirements of Section 129

This report by the Bureau of Indian Affairs (BIA) is in response to the directive included in Section 129 of the Interior and Related Agencies portion of Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999 bill.

Section 129 states:

> *a. In the event any tribe returns appropriations made available by this Act to the Bureau of Indian Affairs for distribution to other tribes, this action shall not diminish the Federal Government's trust responsibility to that tribe, or the government-to-government relationship between the United States and that tribe, or that tribe's ability to access future appropriations*
>
> *b. The Bureau of Indian Affairs (BIA) shall develop alternative methods to fund tribal priority allocations (TPA) base programs in future years. The alternatives shall consider tribal revenues and relative needs of tribes and tribal members. No later than April 1, 1999, the BIA shall submit a report to Congress containing its recommendations and other alternatives. The report shall also identify the methods proposed to be used by BIA to acquire data that is not currently available to BIA and any data gathering mechanisms that may be necessary to encourage tribal compliance. Notwithstanding any other provisions of law, for the purposes of developing recommendations, the Bureau of Indian Affairs is hereby authorized access to tribal revenue-related data held by any Federal agency, excluding information held by the Internal Revenue Service.*
>
> *c. Except as provided in subsection d, tribal revenue shall include the sum of tribal net income, however derived, from any business venture owned, held, or operated, in whole or in part, by any tribal entity which is eligible to receive TPA on behalf of the member or any tribe, all amounts distributed as per capita payments which are not otherwise included in net income, and any income from fees, licenses or taxes collected by any tribe.*
>
> *d. The calculation of tribal revenues shall exclude payments made by the Federal government in settlement of claims or judgements and income derived from lands, natural resources, funds, and assets held in trust by the Secretary of the Interior.*
>
> *e. In developing alternative TPA distribution methods, the Bureau of Indian Affairs will take into account the financial obligations of a tribe such as budgeted health,*

> *education and public works service costs; its compliance, obligations and spending requirements under the Indian Gaming Regulatory Act; its compliance with the Single Audit Act; and its compact with its State*

The statutory directive requires the BIA to develop alternative methods to distribute Tribal Priority Allocation (TPA) base funds in future years, taking into account Tribal revenues and the relative needs of Tribes and Tribal members. This directive aims at an equitable distribution of BIA resources among the Tribes.

CHAPTER 1
BACKGROUND

Scope of BIA Operations
Basic Legislative Authorities
Prohibition on Imposition of Program Standards
Tribal Priority Allocations

The Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA) provides services directly or through Self-Determination contract, grant or compact agreements with Tribes and Tribal organizations to more than 1.2 million American Indians and Alaska Natives in 31 states. The BIA's programs are funded and operated in a highly decentralized manner with more than 90 percent of all appropriations expended at the local level. Nearly 55 percent of BIA funds are expended by Tribes and Tribal organizations through contracts or Self-Governance compacts, according to the FY 1998 Annual Report. In addition, the BIA administers more than 43 million acres of Tribally-owned land, more than 11 million acres of individually-owned land held in trust, and 443,000 acres of Federally-owned land.

Federal Indian policy and the trust responsibility are derived from the special legal and political relationship between the Tribes and the Federal Government, embodied in treaties and other agreements, the Constitution, statutes, and court decisions. While the BIA has been given explicit duties with respect to the trust relationship, that relationship is between the whole of the Federal Government and each individual Tribe. Other Federal agencies share the trust responsibility with BIA.

Much of Federal Indian policy revolves around this special relationship, which is often broadly expressed in terms of legal duties, moral obligations, and expectancies that have arisen from the historical dealings between the Tribes and the Federal Government. In its narrowest sense, the special relationship is described as a trust relationship between a trustee and the beneficiary, with explicit standards of performance often enforceable in court. In the larger sense, the relationship has been likened to that of a protectorate in which the larger nation extends protection to the smaller and safeguards its right to existence.

In the last two centuries, the Congress has passed an extraordinary number of Federal laws dealing with Indian Tribes. While the Snyder Act, the Indian Self-Determination and Education Assistance Act and the Indian Education Amendments of 1978 provide the primary budgetary authorities of the BIA, numerous statutes, court decisions, treaties and other authorities (including those passed in the early 1800s regulating trade with Indians) continue to guide the BIA's operations and administration.

The BIA is unique among government agencies in many respects. It is unique in relation to its own mission and structure. Some agencies operate programs or deliver services directly to beneficiaries; others are grant making agencies. Even in an agency that may combine the two functions, the line of demarcation is clear and established by statute. With few exceptions, potential beneficiaries of Federal services or grants do not have any form of "right" to the service or to a particular share of benefits; they merely have the right of access on equitable grounds.

The BIA, on the other hand, serves all Federally recognized Tribes and groups. It operates either programs or contracts for the delivery of services at the discretion of the Tribes. The Tribes also have the right to change from direct BIA services to contracting and back again at virtually any time and for virtually any reason. The uncertainties inherent in such a process are enormous. Further, the BIA must maintain the level of direct services to each Tribe throughout the country while also trying to provide adequate resources for Tribal contracting and Self-Governance compacting.

The BIA is also unique in its relationship with its Tribal constituents. It is the principal agency of the Federal government charged with the responsibility to administer Federal Indian policy and programs and to fulfill the Federal trust responsibility for American Indian and Alaska Native Tribes and Tribal organizations. As such, it has on the one hand certain supervisory functions, particularly those relating to trust property, and on the other hand, it is obligated to implement a policy of Tribal Self-Determination and turn over large portions of the BIA budget and programs to the Tribes. No other Federal agency has quite the same obligation to consult with its constituents in the course of implementing its statutory responsibilities.

The scope of BIA programs is broader than that of any other Federal agency. It is extensive and covers virtually the entire range of state, local and Tribal government services, including elementary, secondary and post-secondary education; social services; law enforcement; Tribal justice systems; business loans; etc. land and heirship records; Tribal government support; forestry, agriculture and range land development; water resources; fish, wildlife and parks; roads; housing; adult and juvenile detention facilities; and irrigation and power systems.

This comprehensive scope of activities creates many unique challenges for the BIA and its Tribal constituents. Virtually every program activity within the scope of the BIA has a counterpart in another Federal agency, which in many cases provide Federal assistance to state and local government to conduct various functions at the local level. Although many non-BIA Federal programs also benefit Indian Tribes and individuals, there is little or no guidance from the Congress as to how the BIA and BIA-funded programs should relate to these larger Federal resources.

In the BIA budget process, Indian needs compete with other Indian needs. While this is inherent in any budget, it is of particular importance in the BIA budget. Despite more than 200 years of Federal trusteeship, Indian people are still, as a group, the poorest people in the nation with generally the highest indicia of poverty and related socio-economic maladies. At the same time, the most specific statutory duties of the BIA relate to its trust obligations regarding Indian land and natural resources, creating a tension and competition between trust and resource functions and the social and humanitarian needs of the Tribes. The BIA's budget process is, then, a series of tradeoffs between the need for support for the BIA's fundamental trust functions and the need to meet various social and economic requirements of the Tribes. Striking the balance between the immediate poverty-related needs of the Tribes and the necessity for investment in longer term infrastructure and development programs which would, it is presumed, keep future generations from poverty vexes both the Administration and the Congress.

Finally, the BIA is unique in that, while its budget is allocated according to specific program categories, its contracting and compacting constituents have wide latitude to transfer funds among categories. As the Tribe's Self-Determination discretion has increased, the BIA's power to target funds has consequently decreased.

The BIA's Constituency

The BIA's programs serve communities that face great challenges. According to the 1990 census, the American Indian population increased to 1,937,391, four times the population reported in 1960. While most of this increase is due to an increase in self-identification, a large portion is an actual population increase. Based on this rapid rate of growth, the Census Bureau estimates that the American Indian population will reach 4.3 million, representing just over 1 percent of the population, by the year 2050. Geographically diverse, almost half of American Indians reside on approximately 300 reservations and other restricted and trust lands located throughout the United States. Reservations range in size from a few acres, such as the rancherias in California, to the 17.5 million-acre Navajo reservation. Approximately 63 percent of American Indians reside in urban areas, half of whom are concentrated in a relatively small number of cities. According to the 1990 census, more than one-half of the American Indian population lived in just 6 states: Oklahoma, California, Arizona, Alaska, Washington and New Mexico.

The American Indian population is relatively young as reported by the 1990 census:

	American Indians	**U.S. Population**
Under 5 years	9.7%	7.3%
Under 18 years	34.2%	25.6%

The census also reports that the median age of American Indians is 26 years, compared to 33 years for the population at large. This young population is in part the result of mortality rates that are higher for American Indians than for the U.S. population. The Indian Health Service reports that the age-adjusted death rate for American Indians is 35 percent higher than that of the general population. Infant deaths are 30 percent higher. Accidental death is 300 percent higher. Alcoholism death is 700 percent higher. The diabetes death rate is 300-400 percent higher. Despite these alarming health status measures, the appropriations for the Indian Health Service have lagged far behind the appropriations for the Department of Health and Human Services.

Socioeconomic measures also show that American Indians trail the general U.S. population. According to the 1990 census, American Indian median family income was $21,619 annually, compared to $35,225 for the U.S. population. More significant is the comparison of 1980 to 1990 census data and socioeconomic trends which indicate that American Indians are slipping farther behind the U.S. population. In 1979, 28 percent of American Indians were living below the poverty level, compared to 12 percent of the U.S. population. By 1989, 31 percent of American Indians were living in poverty, compared to 13 percent of the U.S. population. Other socioeconomic indicators reveal the following:

	American Indians	**U.S. Population**
High School Graduates	65.5%	75.2%
4 or More Years of College	9.3%	20.3%
Single Parent Households	35.8%	21.4%

Unemployment	14.4%[1]	6.3%

The BIA's 1997 Indian labor force estimates show that the situation on-or-near reservations is worse. There are 965,000 Indians of employable age. Nearly 205,000 are not available for work. Of the remaining 760,000 Indians, only half are employed.

In summary, American Indians are younger and have higher levels of poverty, unemployment, single parent families, fertility, and mortality than the U.S. population at large. Trends are deteriorating for this highly vulnerable population.

BIA Programs

Until quite recently, the BIA's service programs were not authorized by specific program statutes, but grew out of the general Federal/Tribal relationship, the needs of the Tribes, the duties inherent in the trust responsibility, and treaty and other obligations. The Congress has not enacted substantive legislation for most BIA programs; therefore the goals for Indian programs are quite general in nature, relying on the authority contained in the 1921 Snyder Act (Title 25 U.S.C. § 13):

> *The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes:*
>
> *General support and civilization, including education.*
>
> *For relief of distress and conservation of health.*
>
> *For industrial assistance and advancement and general administration of Indian property.*
>
> *For extension, improvement, operation, and maintenance of existing Indian irrigation systems and for development of water supplies.*
>
> *For the enlargement, extension, improvement, and repair of the buildings and grounds of existing plants and projects.*
>
> *For the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees.*
>
> *For the suppression of traffic in intoxicating liquor and deleterious drugs.*
>
> *For the purchase of horse-drawn and motor-propelled passenger-carrying vehicles for official use.*
>
> *And for the general and incidental expenses in connection with the Administration of Indian affairs.*

The BIA relies exclusively on the Snyder Act for its authority to operate many programs, such as:

---

[1] This figure includes both on- and off-reservation Indian residents (roughly 1/3 and 2/3 respectively); the figure is much higher on-reservation where jobs are more scarce.

Tribal Government –
    Community Services General;
    Other Aid to Tribal Government;
    New Tribes;
    Tribal Courts;[2] and
    Small Tribes Distribution.

Human Services –
    Services to Children, Elderly and Families;
    Welfare Assistance;[3]
    Housing Improvement Program, and
    Other Human Services (Tribal Design).

Education –
    Scholarships;[4]
    Adult Education;
    TCCC Supplements to Grants, and
    Other Education (Tribal Design).

Public Safety and Justice –
    Community Fire Protection; and
    Other Public Safety and Justice (Tribal Design).

Resources Management
    Natural Resources, General;
    Agriculture;[5]
    Agriculture Extension Services,

---

[2] The *Indian Tribal Justice Support Act,* (25 U.S.C. § 3601 *et seq.*) does provide specific guidance on the factors to be considered in developing a formula to support Tribal justice systems and identifies the specific purposes for which financial assistance may be used; however, the statute specifically requires that funds for this Act be appropriated outside of Tribal Priority Allocations (25 U.S.C. § 3621(f). No appropriations have been made under this authority; Tribal justice systems are still funded under TPA.

[3] General assistance payment levels have been established through Appropriations.

[4] The *Higher Education Grant Authorization Act.* (25 U.S.C. § 3301 *et seq.*) authorizes the Secretary to award grants to Tribal governments in lieu of Self-Determination contracts to administer the scholarship program, but relies on the *Snyder Act* for the underlying authority to award scholarship grants to individuals.

[5] The *American Indian Agricultural Resource Management Act.* (25 U.S.C. § 3701 *et seq.*) includes specific purposes and objectives; however, implementing regulations have not been issued and the initial assessment of the condition of agricul-tural lands which is required by the Act (to establish a baseline from which to measure improvements to agricultural productivity) has not been funded.

Forestry;[6]
Water Resources;
Wildlife and Parks; and
Minerals and Mining.[7]

Other programs have program specific statutory authorizations. The Indian Child Welfare Act[8] is intended to establish minimum Federal standards for the removal of Indian children from their families, and to ensure that, when children must be placed in foster or adoptive homes, the homes reflect the values of the Indian culture. The Act also authorizes programs for providing support to Tribes in the operation of child and family service programs.

The Johnson-O'Malley (JOM) Act authorizes the Secretary to enter into contracts with states, local governments, and private institutions for the "education, medical attention, agricultural assistance, and social welfare. . . of Indians. . ." Until the passage of the Indian Self-Determination and Education Assistance Act, the JOM funds were used by public school districts to either defray the costs of educating Indian children or provide additional services to Indian children attending public schools. Recognizing that states are obligated to provide a public education to Indian children, JOM funds were subsequently designated "to supplement not supplant" state and district education spending for Native American students attending public schools on or off reservation. The funding formula was based upon the average state per pupil expenditures. Further refinements to the formula narrowed the differences in the distributions among the states by establishing a floor and a ceiling on the per pupil costs that were used to calculate the JOM distribution. This formula was used to transfer JOM funds to the base Tribal Priority Allocations (TPA) budget in the mid-1990s. The bulk of the JOM funds are now used by Indian Tribes to provide additional education services, rather than having such services provided through the state or local school district. As part of the TPA base, Tribes can increase or decrease the amounts initially transferred to TPA for this program.

---

[6] The *National Indian Forest Resources Management Act* (25 U.S.C. § 3101 *et seq.*) requires the establishment of a formula to determine Tribes eligible for forestry support and to determine the level of assistance appropriate for each eligible Tribe. The formula established pursuant to regulations (25 CFR § 163.36) is used only to allocate forestry appropriations which are funded through the Non-Recurring Programs activity; the formula is not used to distribute those funds included in TPA.

[7] The *Indian Energy Resources Act* (25 U.S.C. 3501 *et seq.*) authorized a grant program within BIA to support training and education of Tribal employees, development of Tribal energy inventories, development and enforcement of Tribal laws and regulations, and the development of a Tribal infrastructure to regulate environmental quality. Implementing regula-tions have not been issued nor have funds been provided to implement this grant program.

[8] The *Indian Child Welfare Act* (25 U.S.C. § 1901 *et seq.*) was initially operated as a competitive grant program. At the recommendation of the Joint Task Force on Reorganization, the available funds were allocated to each Tribe's base budget. While the initial distribution was made using population data, Tribes may increase or decrease the amounts originally trans-ferred. Tribal funding currently ranges from a few hundred dollars to approximately $700,000. In authorizing appropriations, ICWA actually relies on the general authority of the *Snyder Act*: "Funds for the purposes of this chapter may be appropriated pursuant to the provisions of section 13 of this title" (25 U.S.C. § 1933(b)).

Title 25 U.S.C. § 309 authorizes "a program of vocational training that provides for vocational counseling or guidance, institutional training in any recognized vocation or trade, apprenticeship, and on the job training ." While the amounts included within TPA are subject to Tribal priority setting, the implementing regulations (25 C.F.R Parts 26 and 27) establish eligibility criteria for the individuals to be served.

Appropriations for road construction and maintenance are authorized by Title 25 U.S.C. § 318a. A formula is used to distribute available appropriations, based on miles of roads in the system and the type of road surface. A portion of the funds provided from Highway Trust Funds may also be used for road maintenance.

In addition to subject specific programs, the BIA also operates (or contracts or compacts with Tribes to operate) certain general programs. The budget lines for Consolidated Tribal Government Program (CTGP) and Self-Governance Compacts really describe award mechanisms rather than programs. Within a CTGP Self-Determination contract or a Self-Governance compact, Tribes administer a number of programs under a single budget line.

Contract Support and the Indian Self-Determination Fund defray the costs of Tribal administrative services that support the delivery of program services. Available funds are distributed equitably as a percentage of the indirect cost rate negotiated by the Tribe and the Office of Inspector General.

Trust Services include a range of activities that are required to manage lands that are held in trust or restricted status. While Indian Tribes may operate trust programs under Self-Determination or Self-Governance awards, the responsibility to ensure these functions are carried out rests with the Federal government. A number of these issues are being addressed as part of the Trust Management Improvement Project.

General Administration reflects the BIA's costs of maintaining a Federal presence on Indian reservations. The BIA has contracted with the National Academy of Public Administration to review administrative operations at all levels of the organization and to make recommendations for improvements. This study will be completed during FY 1999 and should provide a strong foundation for appropriate allocation of BIA administrative staff and resources.

Program Standards

While the lack of specificity in authorizing statutes usually can be addressed through regulations or through specific performance criteria included in contract or grant awards, the substantive legislation governing BIA awards to Indian Tribes removes this authority. The Indian Self-Determination and Education Assistance Act (ISDEAA) provides that:

> ***Proposal to redesign program, activity, function, or service.*** *– Upon providing notice to the Secretary, a tribal organization that carries out a nonconstruction, Self-Determination contract may propose a redesign of a program, activity, function,*

> *or service carried out by the tribal organization under the contract, including any nonstatutory program standard, in such manner as to best meet the local geographic, demographic, economic, cultural, health, and institutional needs of the Indian people and tribes served under the contract. (25 U.S.C. 450j(j).*
>
> ***Rules and Regulations.*** *-- Except as may be specifically authorized in this subsection, or in any other provision of this subchapter, the Secretary of the Interior and the Secretary of Health and Human Services may not promulgate any regulation, nor impose any nonregulatory requirement, relating to Self-Determination contracts, except that the Secretary of the Interior and the Secretary of Health and Human Services may promulgate regulations under this subchapter relating to chapter 171 of title 28, commonly known as the "Federal Tort Claims Act," the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), declination and waiver procedures, appeal procedures, reassumption procedures, discretionary grant procedures for grants awarded under section 450h of this title, property donation procedures arising under section 450j(f) of this title, internal agency procedures relating to implementation of this subchapter, retrocession and tribal organization relinquishment procedures, contract proposal contents, conflicts of interest, construction, programmatic reports and data requirements, procurement standards, property management standards, and financial management standards. (25 U.S.C. § 450k(a)(1))*
>
> ***Federal program guidelines, manuals, or policy directives.*** *-- Except as specifically provided in the Indian Self-Determination and Education Assistance Act, the Contractor is not required to abide by program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Contractor and the Secretary, or otherwise required by law. (25 U.S.C. § 450l © paragraph (b)(11)) [Emphasis added.]*

These provisions give Tribes wide latitude in operating programs as they deem most appropriate and require that non-statutory standards be separately negotiated in each contract. Because there are no statutory standards for most of the TPA programs, the BIA has very limited ability to specify programmatic standards or obtain consistent data across programs from all Tribes. The BIA and the Tribes will work together to develop standards and data reporting in annual funding agreements and contracts to adequately address accomplishments for Government Performance and Results Act reports and to report progress in satisfying Tribal needs.

Use of TPA Funds

Through both the Indian Self-Determination and Education Assistance Act and the reprogramming procedures adopted by the Committees on Appropriations, Tribes determine relative program priorities in the budget formulation process. Tribes also have the ability to reallocate funds from one program to another after appropriations are enacted. The BIA supports this flexibility because Tribal needs change during the 18-month period between budget formulation and the beginning of the fiscal year.

Reporting

Given the statutory limitations on imposition of program standards for Tribally-operated programs and the ability of the Tribes to redesign program operations, the reporting requirements identified in regulation provide that: "Unless required by statute, there are no mandatory reporting requirements."

The statutory reporting requirements for Self-Determination and Self-Governance awards are limited to submission of the report required by the Single Audit Act. This report includes the results of a third-party audit of the Tribe's financial statements, statements regarding the system of internal controls employed by the Tribe to protect assets, and a report on Tribal compliance with those Federal laws common to all Federal assistance awards. Self-Determination Tribes provide annual reports in narrative form on their program operations. The BIA provides the Congress with reports on Self-Governance Tribes funding with Tribal comments included. However, these reports provide no standard information about program accomplishments.

Resolving issues of reporting is in the best interests of the BIA and the Tribes. If the basis for future increases in TPA is related to Tribal needs, a means of reporting accomplishments measured against standards acceptable to the Tribes, the Administration, and the Congress is necessary to provide credibility to such a process.

BIA Budget Structure and Funding[9]

The BIA budget is large and complex. Prior to 1993, programs were categorized based on the BIA's primary organizational components, which did not necessarily mirror the major "sectors" of responsibility at the local government level. From the Tribes' perspective, the budget was made more understandable in 1993 when the Appropriations Subcommittee approved its restructure to the manner in which it is organized today. The restructure was based on a proposal by the Joint Tribal/DOI/BIA Task Force on Reorganization of the BIA, which realigned the budget for ongoing "Operation of Indian Programs" in major components based on its distribution and use. The components include:

---

[9] The base numbers used in this report are FY 1998 appropriations. FY 1998 was selected because budget planning and appropriations were completed before this report was due, the funds were completely allocated and executed, and the FY 1998 annual financial statement is completed. This makes FY 1998 the most recent year for which the BIA has complete financial information.

Because the substance of this report is the issue of TPA allocations to Tribes from an appropriations bill, the BIA attempted to consistently use the data base of FY 1998 enacted. However, it must be noted that financial resources for any particular program may come not only from a current appropriation action, but carry-overs from previous periods and/or supplemental appropria-tions and/or authorized transfers and reprogramming. The resulting apparent inconsistency occurs when any particular point is used to measure funds provided to Tribes. Such differences will appear in the report when comparing the detailed data base for Self-Governance Tribes against the detailed data base for all other Tribes.

- Tribal Priority Allocations: Budget resources that are part of recurring "base funding" at the local Tribal level. The Task Force's goal was to see nearly all of the local programs of the BIA included in this category over time, except those for school operations.

- Other Recurring Programs: Programs operated each year at the local level that are not part of the Tribes' base funding, but are distributed by formula or some other method. This included School Operations for the BIA-financed schools. These programs are largely distributed according to (1) earmarks, as in the fisheries programs, or (2) by formula, as in the school operations programs.

- Non-Recurring Programs: Programs that are temporary projects at given locations. Resources are moved around from location to location based on need, or were subject to competitive grant processes.

The above three components contain the funds for programs and activities at the Tribal level. The next three budget components deal with activities of the BIA:

- Area Office Operations: General managerial and support functions carried on in the 12 Area Offices.

- Central Office Operations: Headquarters functions carried on in Washington, D.C. and in other key central support offices located in different parts of the country.

- Special Programs and Pooled Overhead: Programs operated at locations other than the Tribal level (such as Haskell Indian Nations University), and general BIA overhead costs that support overall BIA operations.

The total appropriation for BIA in FY 1998 was $1.703 Billion, including supplementals. Included within this total appropriation were:

Operation of Indian Programs	$1.530 Billion
Construction	$125 million
Indian Land and Water Claim Settlements	$43 million
Indian Guaranteed Loan Program	$5 million
Total	$1.703 Billion

TPA is a budget activity (the first level of subdivision in an account) within the Operation of Indian Programs account (OIP). Funding for OIP activities in FY 1998 was as follows:

Tribal Priority Allocations (TPA)	$757 million
Other Recurring Programs	$549 million
Non-Recurring Programs	$61 million
Central Office Operations	$47 million
Area Office Operations	$41 million
Special Programs and Pooled Overhead	$74 million
Total	$1.530 Billion

The budget activities are further subdivided into subactivities, program elements, and program subelements. The subactivities are Tribal Government, Human Services, Education, Public Safety and Justice, Community Development, Resources Management, Trust Services and General Administration. While the subactivities repeat throughout the structure of the OIP account, the program elements and subelements are different for the various budget activities. A more complete description of the program elements and subelements for TPA is found in Appendix 1.

The language of Section 129 refers to TPA "base" programs. Not all of the $757 million in TPA is part of the Tribes' base funding. Most program elements and subelements within TPA have been allocated to a Tribe's (or BIA agency's) TPA "base." Four specific programs (Contract Support, Welfare Assistance, Housing Improvement Program and Road Maintenance) have not been allocated to the Tribes' base amounts, with the exception of a handful of Self-Governance Tribes. Instead, they are allocated annually by formula. In addition to these four programs, there are other programs in TPA that are not appropriated directly into Tribal base funding, but later became part of a Tribe's base. New Tribes funding stays in the TPA budget without transfer to a Tribe's base for the first three years of a new Tribe's funding history. After three years, it is transferred into a Tribe's base and disappears from the New Tribes line. The Indian Self-Determination Fund for new and expanded *P.L. 93-638* contracts is not initially distributed to the base, but transferred to Contract Support after use in a given year. When TPA is reduced by those elements not included in Tribal base funding, the level of FY 1998 funding in Tribal TPA bases was only $510 million. In FY 1999, the Congress removed the Law Enforcement program element from TPA. Therefore, for purposes of comparison, Law Enforcement funding must be deducted from the FY 1998 TPA base leaving $436 million at issue.

Tribe-to-Tribe comparisons are complicated by many factors. For example, a single line (program element) within TPA contains all funding for Self-Governance Compacts. Most Self-Governance Tribes have combined all sources of BIA funding into their compacts, including not only TPA, but also funds for Other Recurring and Non-Recurring programs. While Self-Governance Tribes have all these funds in their TPA bases, one cannot simply compare Self-Governance base funding with non-Self-Governance Tribes that do not have the same sources of funds included in their base.

Tribal Priority Allocations - Process and Implications

Managing and maintaining a budgeting system that allows for input from 554 Tribes is increasingly complex. TPA is a unique part of the Federal Indian budget that relies upon Tribal governments to identify spending priorities based upon the most critical needs of their respective communities. Shifting resources away from TPA deprives the Tribal governments of the power to decide how scarce Federal funds should be allocated.

The TPA budgeting process begins in early spring with the BIA requesting Tribes to submit their TPA requests at several different budget levels for the succeeding Federal fiscal year. Tribes are requested to prioritize their spending needs at the levels of 90 percent and 100 percent of the amount received in the previous year. Tribes are also requested to prioritize funding requests at several levels above what they received in the previous last year. These levels are based on Departmental guidance, which comes out in late spring or early summer. Tribal data is combined with agency budget data by the Area offices and then forwarded to the Central Office, where it is summarized. This information is then available at the BIA National Budget Meetings, which are usually held in May.

During the TPA budgeting process, Tribes are able to re-prioritize their existing base amounts and to set priorities for any increases or identify adjustments for any decreases. Following the BIA National Budget Meeting, senior BIA officials confer and make recommendations to the Assistant Secretary - Indian Affairs. In early or mid-summer, the BIA submits its budget request to the Department.

In early September following final Secretarial decisions, the Department submits its request to OMB, which provides its initial "passback" around Thanksgiving. From that period until early January, appeals are heard and final decisions are made by the Department and OMB. The budget is then submitted to the Congress in February. During the budget formulation process, the relative priorities set by the Tribes generally remain the same, although the total amount being requested for TPA will vary. In order for Tribes to provide increases for higher priority programs, they have to decrease funding for programs.

The overall national levels of funding for Indian Priority System ("IPS", the predecessor to TPA) programs increased slightly from 1981 to 1990, but not enough to keep pace with inflation, population growth, or need. Some Tribes persuaded the Congress to provide appropriations "add-ons" for programs such as law enforcement or social services. The Congress would appropriate additional funds for those Tribes and these funds would be added to the Tribe's base funding amount. Some isolated and poorer Tribes did not have the resources to advocate for additional funding from the Congress for their programs, and disparities in Tribal base funding emerged and were made permanent.

During the early 1990s, the Congress began to provide general increases for the TPA program. The Tribal priorities established during the TPA process were then used to distribute general increases to Tribes.[10]

---

[10] In the past several years, increases to TPA have been line specific, (i.e., increases for Welfare Assistance, Contract Support and New Tribes and Small Tribes, in particular).

All general increases and decreases have been allocated on a pro-rata basis, i.e., every Tribe receiving the same percent change with no regard for Tribal needs. The existing disparities became larger.

One objective of the system was to move programs that were located in "Other Recurring Programs" to "Tribal Priority Allocations" where, after a fair and equitable need based distribution was made, the amounts would be added to each Tribe's funding base. A specific set of steps to arrive at this distribution was laid out by the Task Force to ensure that all Tribes had input into the final formulas that would be used. Johnson O'Malley, Welfare Assistance, Road Maintenance, Housing Improvement and Contract Support programs were placed in the TPA Activity in the budget, but only the Johnson O'Malley program has become part of the Tribal bases.

Tribal Priorities

For years, Tribes have placed their highest priorities on overall increases to Tribal Priority Allocations. These would expand Tribal base funding and permit each Tribe to determine how additional resources are allocated. Increases that fall short of increased costs due to inflation and pay adjustments means a loss of purchasing power at the local level. Only partial pay cost adjustments were added for 1999. No increases have been available for inflation on non-pay related costs for several years.

Contract Support has been listed as the Tribes' second highest priority for a number of years, because it finances Tribal government management and accounting capacity represented by indirect costs that must be allocated under Federal Cost Principles to each program, whether funded or not. Contract Support is the subject of much work and discussion during 1999. Due to the growth in Tribal requirements and a number of lawsuits, the Congress included language in the 1999 appropriations act to limit Federal liability to the amounts appropriated. The Congress also placed a moratorium on new contacts and compacts within both the Indian Health Service and the BIA in FY 1999. Consistent with the moratorium, no funds were appropriated for the Indian Self-Determination Fund to provide for new contracts or compacts for FY 1999.

Reallocation of TPA Cannot be based on Simple Single Criteria

This section presents an analysis of the distribution of BIA's Tribal Priority Allocations (TPA) funds on a nationwide basis. A major focus of this section is to describe the methodological problems that must be solved in analyzing the distribution of TPA funds.

In FY 1998, there was $757 million in TPA funds available to BIA Agencies and Tribes. TPA made up almost half of the BIA's operating budget of $1.5 billion. Approximately half of the TPA funds were spent by Tribes through Self-Determination contracts or Self-Governance compacts.

Of the total amount of TPA funds, approximately $508 million, or 67 percent, were "base" funds that were

---

dedicated to a specific BIA Agency or a specific Tribe as part of the on-going TPA base for that Agency or Tribe. Another $249 million (33 percent) was provided to 4 TPA "non-base" programs -- Contract Support, Welfare Assistance, Housing Improvement and Road Maintenance. The non-base program funds are not a part of the on-going TPA base for each Agency or Tribe. Only the base TPA funds are analyzed here.

Of the total amount of TPA base funds, approximately $124 million, or 24 percent, were provided to Tribes through Self-Governance compacts. This report uses two approaches to analyze Self-Governance compact funds. The first approach is to include the Self-Governance funds as a part of the TPA funds for the 12 BIA Areas. The second approach is to analyze the Self-Governance funds as a "13th" Area.

In order to analyze the distribution of TPA funds, several methodological problems must be addressed:

What is the source of TPA funding data?

- Which TPA funds should be included in the analysis, and which should be excluded?
- How should Self-Governance compact funds be treated?
- How should Consolidated Tribal Government Program (CTGP) funds be handled?
- How should human services funds be analyzed?
- What is the source of population data?
- How should natural resources funds be analyzed?
- What is the source of Indian trust lands data?

These issues are discussed in the following section(s).

Source of TPA Funding Data

The data used for this analysis were the TPA allocations for the FY 1998 enacted appropriation. The format is identical to those in the President's Budget Request tables in the back of the BIA Budget Justifications and Annual Performance Plan. This data are readily available from the Central Budget Office, but required some additional inquiries to collect the details of Self-Governance compacts and the Consolidated Tribal Government Programs as discussed later.

TPA Funds Included in the Analysis

Only the "base" TPA funds are included in the analysis. The base TPA funds are funds that are identified with a specific Agency or a specific Tribe and included as a part of the on-going TPA funding base for the Agency or the Tribe. The total amount identified traditionally as TPA base funding in FY 1998 was approximately $508 million. However, after removal of non-base program funding from the Self-Governance compacts, the total TPA base was $484 million, and the allocation for Self-Governance compacts went from $124 million to slightly over $100 million. The non-base funding found in compacts includes those categories described below, and includes funding from other activities such as Non-Recurring and Other Recurring Programs found in the Operation of Indian Programs (OIP).

The "non-base" TPA funds are Contract Support, Welfare Assistance, the Housing Improvement Program and Road Maintenance. The "non-base" TPA funds are allocated to Agencies and Tribes on an annual basis and are not identified with the on-going base funding for each Agency or Tribe. The total amount of non-base TPA funds in FY 1998 was approximately $249 million. This amount grew to $273 million after all adjustment to remove non-base funding from compacts.

The TPA funds were broken down into three categories -- human services, natural resources and general administration. The human services programs were analyzed in relation to service population and the natural resources funds were analyzed in relation to Indian trust lands. The distribution of general administration funds is not addressed.

Self-Governance Compacts

The BIA funding for Self-Governance compacts is included in the TPA activity in the BIA budget. In the TPA tables in the back of the BIA Budget Justifications to the Congress, the funds for Self-Governance compacts are listed separately from the TPA allocations to the 12 Areas and the non-compact Tribes.

The Self-Governance compact funds in the Budget Justifications are displayed as one line-item -- Self-Governance -- with no indication of how the funds are spent by program area. In order to compare the Self-Governance funds to the non-compact TPA funds, the Self-Governance funds must be "allocated" to three program areas -- human services, natural resources and general administration. This was accomplished by acquiring the details of each compact from the financial section of the Office of Self-Governance.

Consolidated Tribal Government Programs

Many Tribes have combined the TPA funding for several Self-Determination contracts into one Consolidated Tribal Government Program (CTGP) contract. As with the Self-Governance compacts, the "Green Book" does not reveal how much of the CTGP funds are spent for human services or for natural resources. The BIA used a data call to the Area Offices to acquire the allocation to each program that each Tribe has combined into a CTGP contract to produce the Areawide and national figures in this Chapter.

Human Services Funds

The human services funds for each Area are aggregated in order to compare the human services funds to the service population for each Area and to analyze the distribution of human services funds on a per-person basis. The human services category used in this report includes the TPA program elements described earlier in this Chapter in the section BIA Program under the subactivities of Tribal Government, Human Services, Education, Public Safety and Justice, and Community Development.

Population Data

The source of the population data used to analyze the distribution of human services funds is the BIA Indian Service Population and Labor Force Estimates report for 1997. Most Tribes submit population data for the report, which is compiled every two years. If a Tribe does not submit data, the data is then compiled by the Tribal Operations Officer at the BIA Agency.

The limitations of the BIA population data should be recognized. For many "reservation" Tribes, service population means the number of Indian people living on or near Tribal lands who are eligible for services from the Tribe or the BIA. "Near" Tribal lands includes communities located in the counties adjacent to reservation lands. In addition, most reservation Tribes require at least one-quarter Indian blood to be eligible for membership in the Tribe and to be eligible for services.

The Tribes in the Muskogee and Anadarko Areas use a different definition for service population, since there are no reservations in Oklahoma. Some of the service areas, which are based on the Tribes' last existing reservations, are larger than those for most reservation Tribes. In addition, the membership requirements for Tribes in the Muskogee Area are much broader than for most Tribes.

In the Juneau Area, there are long-standing uncertainties about the status and boundaries of Native lands. The BIA population report provides data for Native villages and Indian Tribes in Alaska. The report also identifies a substantial number of Native people as "at-large" and not necessarily identified with a specific village or Tribe.

Because of the factors described above, the population data are not consistent from Area to Area. However, the 1997 BIA report is the most recent, complete set of population data for Indian Tribes and Alaska Native villages. For the purposes of this report, the service population data are used. In future studies of human services funding, the enrollment data should be used for comparative purposes.

Natural Resources Funds

In order to compare the TPA base funds spent for natural resources programs, the natural resources funds for each Area are aggregated. The natural resources category in this report includes the program elements described earlier in this Chapter in the section BIA Program under the subactivities of Resources Management and Trust Services.

Indian Trust Lands Data

The source of Indian trust lands data is based on the BIA Report of Indian Lands for 1985. While the 1985 report is the most recent published report, the BIA collects periodically estimates of current status. This report used BIA internal estimates by Tribe for the year ending December 31, 1996. When the BIA prepares it annual report for 1998, it intends to include Tribal detail of land base.

THE DISTRIBUTION OF TPA FUNDS TO THE TWELVE AREAS, WITH SELF-

GOVERNANCE COMPACT FUNDS INCLUDED IN EACH AREA

In FY 1998, approximately $484 million in TPA base funds were allocated to the 12 Areas and to Self-Governance compacts:

FY 1998 TPA BASE FUNDING BY AREA (Based on the FY 1998 Enacted)			
Area	Self-Gov. Allocation	Other TPA Allocation	Total TPA Funds
Aberdeen	0	51,844,870	51,844,870
Albuquerque	910,678	31,992,351	32,903,029
Anadarko	2,877,603	17,144,551	20,022,154
Billings	2,431,318	27,338,825	29,770,143
Eastern	0	26,386,571	26,386,571
Juneau	32,916,175	23,657,703	56,573,878
Minneapolis	13,791,070	21,387,321	35,178,391
Muskogee	16,990,218	10,956,941	27,947,159
Navajo	0	48,631,672	48,631,672
Phoenix	3,742,331	54,506,291	58,248,622
Portland	21,834,173	45,272,368	67,106,541
Sacramento	4,849,001	24,107,087	28,956,088
TOTALS	100,342,567	383,226,551	483,569,118

The following chart displays the percent of total TPA base dollars, including Self-Governance compact funds, allocated to each Area:

FY 1998 TPA FUNDS BY AREA Including Self-Governance		
Area	Total Allocation	Percent of Total
Portland	67,106,541	13.9%
Phoenix	58,248,622	12.0%
Juneau	56,573,878	11.6%
Aberdeen	51,844,870	10.7%
Navajo	48,631,672	10.1%
Minneapolis	35,178,391	7.3%
Albuquerque	32,903,029	6.8%
Billings	29,770,143	6.1%
Sacramento	28,956,088	6.0%
Muskogee	27,947,159	5.8%
Eastern	26,386,571	5.5%
Anadarko	20,022,154	4.1%
TOTALS	483,569,118	100.0%

Of the total TPA base funds, 79.3 percent were allocated to BIA Agencies or to Tribes with Self-Determination contracts. The other 20.7 percent were allocated to Tribes with Self-Governance compacts. Standing alone, these number are not particularly enlightening. While the Portland Area receives four times the amount received by the Anadarko Area, without knowing something of the purposes for which the

BEST COPY AVAILABLE

funds were provided and spent, no helpful conclusions can be drawn.

DISTRIBUTION OF TPA FUNDS

Two tests are more useful for analyzing the distribution of TPA funds. The first is to analyze the distribution of human services funds per person. The other is to analyze the distribution of natural resources funds per acre.

The following table shows the distribution of funds among the areas after allocating Self-Governance and CTGP funds into the various programs from which the funds were derived.

FY 1998 TPA BASE FUNDS BY AREA

INCLUDING SELF-GOV. COMPACTS*

Area	Human Services	Natural Resources	Gen. Admin.	Total Allocation
Aberdeen	38,599,398	9,716,602	3,528,870	51,844,870
Albuquerque	21,989,024	8,428,550	2,485,455	32,903,029
Anadarko	14,694,061	3,832,904	1,495,189	20,022,154
Billings	19,519,665	8,164,852	2,085,626	29,770,143
Eastern	19,979,230	5,431,011	976,330	26,386,571
Juneau	42,923,378	10,551,906	2,911,287	56,573,878
Minneapolis	26,332,216	6,530,993	2,315,182	35,178,391
Muskogee	21,157,061	4,977,723	1,812,375	27,947,159
Navajo	39,857,512	8,394,845	379,315	48,631,672
Phoenix	42,595,509	11,555,486	4,097,627	58,248,622
Portland	34,403,881	27,564,088	5,138,572	67,106,541
Sacramento	23,842,450	4,049,804	1,063,834	28,956,088
TOTALS	346,081,197	109,198,764	28,289,157	483,569,118

*Self-Gov. funds allocated by program area.

Most of the TPA base funds (71.6 percent) were allocated to human services programs, on a national basis. Only 22.6 percent of the TPA base funds were allocated to natural resource programs, and 5.9 percent were spent for general administration. Interestingly, while the Portland Area receives by far the largest allocation, the disparity is primarily attributable to the high percentage of natural resources funds.

The following chart displays the allocation of TPA base human services funds in FY 1998:

BEST COPY AVAILABLE

HUMAN SERVICES FUNDS BY AREA*		
Area	Human Services Allocation	Percent of Total
Juneau	42,923,378	12.4%
Phoenix	42,595,509	12.3%
Navajo	39,857,512	11.5%
Aberdeen	38,599,398	11.2%
Portland	34,403,881	9.9%
Minneapolis	26,332,216	7.6%
Sacramento	23,842,450	6.9%
Albuquerque	21,989,024	6.4%
Muskogee	21,157,061	6.1%
Eastern	19,979,230	5.8%
Billings	19,519,665	5.6%
Anadarko	14,694,061	4.2%
TOTALS	346,081,197	100.0%

*Including Self Governance funds.

The following chart displays the BIA service population for each Area:

BIA SERVICE POPULATION		
1997 BIA Labor Force Report		
Area	Service Population	Percent of Total
Muskogee	346,368	17.1%
Navajo	234,786	16.3%
Aberdeen	140,949	9.8%
Portland	129,888	9.0%
Phoenix	126,397	8.8%
Juneau	109,259	7.6%
Minneapolis	89,487	6.2%
Albuquerque	62,669	4.3%
Sacramento	60,174	4.2%
Anadarko	50,613	3.5%
Eastern	50,196	3.5%
Billings	41,961	2.9%
TOTALS	1,442,747	100.0%

Another way to analyze the distribution of human services funds is to analyze the funding per person for the 12 Areas:

TPA HUMAN SERVICES FUNDS PER PERSON			
FY 1998 TPA Base Funds, 1997 Service Population			
Area	Human Services Funding	Service Population	Funding per Person
Billings	$19,519,665	41,961	465.19
Eastern	19,979,230	50,196	398.02
Sacramento	23,842,450	60,174	396.23
Juneau	42,923,378	109,259	392.86

BEST COPY AVAILABLE

Albuquerque	21,989,024	62,669	350.76
Phoenix	42,595,509	126,397	337.00

TPA HUMAN SERVICES FUNDS PER PERSON (CONTINUED)

Area	Human Services Funding	Service Population	Funding per Person
Anadarko	14,694,061	50,613	290.32
Aberdeen	38,599,398	140,949	273.85
Portland	34,403,881	129,888	264.87
Navajo	39,857,512	234,786	169.76
Muskogee	21,157,061	346,368	61.08
TOTALS	$346,081,197	1,442,747	239.88

The national average expenditure of TPA human services base dollars per person is $239.88. Ten Areas receive more than the average and two Areas receive significantly less than the average. The disparities among the areas are striking, with the Billings Area receiving over 750 percent more per person than the Muskogee Area. At the same time, this simple analysis fails to take into account certain obvious socio-economic factors. For example, unemployment in the Billings Area far exceeds that in Muskogee. Factoring in the prevalent subsistence activities in the Navajo and Juneau Areas is quite difficult, but probably relevant to a needs-based distribution. Muskogee's unique history, in which Tribal governments were largely inactive from 1906 until the mid-1970s, helps account for some part of the disparity. It resulted in lower level of funding for tribal government, but it is difficult to say how much. In addition, the broad enrollment criteria for Muskogee Area Tribes vastly expands the service population in the Area. It raises the question should enrollment criteria play any role in the allocation of TPA funds? Finally, while the Portland Area receives the largest amount of TPA funds overall, it falls towards the end of the range of Human Services funds per person.

One way to redistribute TPA base human services funds is to provide every area with same amount of funding -- $239.88 -- on a per-person basis.

REDISTRIBUTION OF TPA BASE HUMAN SERVICES FUNDS ON A PER-PERSON BASIS

1998 TPA Base Funds, 1997 Service Population

Area	Human Services Funding	Service Population	Redistribution (Population X $239.88)	Gain or (Loss)
Muskogee	21,157,061	346,368	83,086,755	61,929,694
Navajo	39,857,512	234,786	56,320,465	16,462,953
Anadarko	14,694,061	50,613	12,141,046	(2,553,015)
Portland	34,403,881	129,888	31,157,533	(3,246,348)
Aberdeen	38,599,398	140,949	33,810,846	(4,788,552)
Minneapolis	26,332,216	89,487	21,466,141	(4,866,075)
Albuquerque	21,989,024	62,669	15,033,039	(6,955,985)
Eastern	19,979,230	50,196	12,041,016	(7,938,169)
Sacramento	23,842,450	60,174	14,434,539	(9,407,911)
Billings	$19,519,665	41,961	10,065,604	(9,454,061)
Phoenix	42,595,509	126,397	30,320,112	(12,275,397)
Juneau	42,923,378	109,259	26,209,048	(16,714,330)
TOTALS	346,081,197	1,442,747	346,081,197	0

BEST COPY AVAILABLE

If the funds were redistributed on a per-person basis, two Areas -- Muskogee and Navajo -- would receive substantial gains. The funding for the Muskogee Area would more than triple and the funding for the Navajo Area would increase by two-thirds. Muskogee obviously benefits from its expansive Tribal membership and resulting large service populations. Navajo, with only one Tribe to serve, also benefits from a large service population without the inefficiencies inherent in multiple Tribe areas and agencies. Note, however, the disturbing impacts of such a redistribution on Areas as Aberdeen and Juneau, where unemployment and poverty are much more severe than in Muskogee. Similarly, in Sacramento and Juneau with their many Tribes, funding on a per person basis will leave many, perhaps most, Tribes with so little funding that Human Service programs would not exist, as a practical matter. Such a distribution methodology also would conflict directly with existing Administration and Congressional policy towards small Tribes. Clearly, redistribution of these funds based solely on service populations would result in such disparities that it is not a superior distribution methodology to the current one.

THE DISTRIBUTION OF NATURAL RESOURCE FUNDS

The following chart displays the allocation of TPA base funds for natural resources programs, by Area:

TPA NATURAL RESOURCES BY AREA*		
Area	Natural Resources Allocation	Percent of Total
Portland	27,564,088	25.2%
Phoenix	11,555,486	10.6%
Juneau	10,551,906	9.7%
Aberdeen	9,716,602	8.9%
Albuquerque	8,428,550	7.7%
Navajo	8,394,845	7.7%
Billings	8,164,852	7.5%
Minneapolis	6,530,993	6.0%
Eastern	5,431,011	5.0%
Muskogee	4,977,723	4.6%
Sacramento	4,049,804	3.7%
Anadarko	3,832,904	3.5%
TOTALS	109,198,764	100%

*Includes Self Governance.

The following chart displays the Indian trust lands by Area:

INDIAN TRUST LANDS BY AREA		
BIA Report of Indian Lands, 1996		
Area	Total Acres	Percent of Total
Navajo	16325939	29.3%
Phoenix	12,726,432	22.8%
Billings	6,579,438	11.8%
Aberdeen	5,939,246	10.6%
Portland	4,864,234	8.7%

Albuquerque	4,664,574	8.4%
Minneapolis	1,495,660	2.7%
Juneau	1,056,562	1.9%
Muskogee	646,207	1.2%
Eastern	576,296	1.0%

INDIAN TRUST LANDS BY AREA (CONTINUED)

Area	Total Acres	Percent of Total
Sacramento	468,055	0.8%
Anadarko	457,694	0.8%
TOTALS	55,800,936	100.0%

The following chart displays the per-acre expenditure of TPA natural resources funds by Area:

TPA NATURAL RESOURCES FUNDS PER ACRE

FY 1998 TPA Base Funds, BIA Report of Indian Lands, 1996

Area	Natural Resources Funding	Trust Land Acres	Funding per Acre
Juneau	10,551,906	1,056,562	9.99
Eastern	5,431,011	576,296	9.42
Sacramento	4,049,804	468,055	8.65
Anadarko	3,832,904	457,694	8.37
Muskogee	4,977,723	646,207	7.70
Portland	27,564,088	4,864,234	5.67
Minneapolis	6,530,993	1,495,660	4.37
Albuquerque	8,428,550	4,664,574	1.81
Aberdeen	9,716,602	5,939,246	1.64
Billings	8,164,852	6,579,438	1.24
Phoenix	11,555,486	12,726,432	.91
Navajo	8,394,845	16,325,939	.51
TOTALS	109,198,764	55,800,939	1.96

On a nationwide basis, the Tribes and the BIA spend $1.96 per acre, of base TPA funds, to manage Indian trust lands. Again, the disparities are at first striking, with the Juneau Area receiving nearly 20 time more per acre than the Navajo Area.

One way to redistribute the existing TPA funds is to provide each of the 12 Areas with the same amount of funding -- $1.96 -- for each acre of Indian trust land:

REDISTRIBUTION OF TPA NATURAL RESOURCES FUNDS

ON A PER-ACRE BASIS

1998 TPA Base Funds, BIA Report of Indian Lands, 1996

Area	Natural Resources Funding	Trust Land Acres	($1.96 per) Acre	Gain or (Loss)
Navajo	8,394,845	16,325,939	31,998,840	23,603,995
Phoenix	11,555,486	12,726,432	24,943,806	13,388,320
Billings	8,164,852	6,579,438	12,895,698	4,730,846
Aberdeen	9,716,602	5,939,246	11,640,922	1,924,320
Albuquerque	8,428,550	4,664,574	9,142.565	714,015
Anadarko	3,832,904	457,694	897,080	(2,935,824)

BEST COPY AVAILABLE

Sacramento	4,049,804	468,055	917,388	(3,132,416)
Minneapolis	6,530,993	1,495,660	2,931,494	(3,599,499)
Muskogee	4,977,723	646,207	1,266,566	(3,711,157)
Eastern	5,431,011	576,296	1,129,540	(4,301,471)
Juneau	10,551,906	1,056,562	2,070,861	(8,481,045)
Portland	27,564,088	4,864,234	9,533,899	(18,030,189)
TOTALS	109,198,764	55,800,939	109,198,764	0

If the TPA funds for natural resources programs were to be redistributed on a per acre basis, five Areas would gain substantial amounts of funds:

- The funding for the Navajo Area would increase by 281 percent.
- The funding for the Phoenix Area would increase by 116 percent.
- The funding for the Billings Area would increase by 58 percent.
- The funding for the Aberdeen Area would increase by 20 percent.
- The funding for the Albuquerque Area would increase by 8 percent.

Seven Areas would lose funding if the natural resources funds were redistributed on a per-acre basis:

- The Juneau Area would lose 80 percent of its natural resources funding
- The Eastern Area would lose 79 percent
- The Anadarko and Sacramento Areas would both lose 77 percent
- The Muskogee Area would lose 75 percent
- The Portland Area would lose 65 percent
- The Minneapolis Area would lose 55 percent.

The disruption of these changes is obvious. Moreover, such changes fail to consider obvious factors such as the diversity of natural resources in the Muskogee, Portland, and Minneapolis Areas; the existing policy directives concerning small Tribes; the relative homogeneity of lands in Navajo, Phoenix, Aberdeen, and Billings; and the effects of the allotment policy in some areas and not others. Again, the simple approach fails to distribute funds more equitably than the current system.

THE DISTRIBUTION OF TPA FUNDS TO THE TWELVE AREAS, AND TO SELF-GOVERNANCE COMPACTS AS A "13TH" AREA

The TPA funding for Self-Governance compacts is made through the Office of Self-Governance. The allocations of non-compact TPA base funds are provided through the 12 Area Offices. In the BIA Budget Justifications to the Congress, the FY 1999 request for TPA base funds displays the allocations for Self-Governance compacts separately from the allocations to the 12 Areas. Many policy-makers believe that Self-Governance Tribes take a disproportionate amount of TPA funds. It is helpful, therefore, to analyze the distribution of TPA funds is to treat the tribes that receive Self-Governance compacts as belonging to a "13th" Area.

The following chart displays the allocations of base TPA funds to the 12 Areas and to the Self-Governance Compacts.

FY1998 TPA ALLOCATIONS TO "13"AREAS		
(Based on FY 1998 Enacted)		
Area	Allocation	Percent of Total
Self-Governance	100,342,567	20.8%
Phoenix	54,506,291	11.3%
Aberdeen	51,844,870	10.7%
Navajo	48,631,672	10.1%
Portland	45,272,368	9.4%
Albuquerque	31,992,351	6.6%
Billings	27,338,825	5.7%
Eastern	26,386,571	5.5%
Sacramento	24,107,087	5.0%
Juneau	23,657,703	4.9%
Minneapolis	21,387,321	4.4%
Anadarko	17,144,551	3.5%
Muskogee	10,959,941	2.3%
TOTALS	483,569,118	100.0%

ALLOCATING SELF-GOVERNANCE COMPACT FUNDS TO PROGRAM CATEGORIES

The distribution of TPA funds can be analyzed by comparing the human services funding on a per-person basis, and by comparing the natural resources funding on a per acre basis. In order to include Self--Governance compact funds in this analysis, the compact funds were allocated to the human services, natural resources and general administration categories.

DISTRIBUTION OF HUMAN SERVICES FUND TO THE "13" AREAS

The first step in analyzing the distribution of TPA human services funds is to analyze the service populations for the 12 Areas and for the Self-Governance compacts. The data for service population is taken from the BIA Indian Service Population and Labor Force Estimates, 1997.

The following table displays the service population for the 12 Areas, with the Self-Governance service population listed as a separate "13th Area":

BIA SERVICE POPULATION		
1997 Service Population Report		
Area	Service Population	Percent of Total
Self-Governance	515,095	35.7%
Navajo	234,786	16.3%
Aberdeen	140,949	9.8%
Phoenix	117,184	8.1%
Portland	76,212	5.3%
Juneau	65,573	4.5%
Albuquerque	60,237	4.2%
Eastern	50,196	3.5%
Minneapolis	40,987	2.8%
Billings	38,519	2.7%
Sacramento	38,517	2.7%
Muskogee	33,960	2.3%
Anadarko	30,532	2.1%
TOTALS	1,442,747	100%

The following chart displays the TPA base funding for human services programs to the 12 Areas and to the Self-Governance compacts:

FY 1998 HUMAN SERVICES FUNDING		
(Based on FY 1998 Enacted)		
Area	Allocation	Percent of Total
Self-Governance	73,414,808	21.2%
Navajo	39,854,512	11.5%
Phoenix	39,605,789	11.4%
Aberdeen	38,599,398	11.2%
Albuquerque	21,315,093	6.2%
Portland	21,127,389	6.1%
Sacramento	20,743,977	6.0%
Eastern	19,979,230	5.8%
Juneau	18,440,779	5.3%
Billings	17,823,381	5.2%
Minneapolis	16,222,427	4.7%
Anadarko	12,353,477	3.6%
Muskogee	6,410,125	1.9%
TOTALS	346,081,197	100.0%

HUMAN SERVICES FUNDS ON A PER-PERSON BASIS

The following chart displays the TPA base human services funds for each Area, plus the Self-Governance compacts, divided by the service population for the " 13 " Areas:

BEST COPY AVAILABLE

HUMAN SERVICE FUNDING PER PERSON			
FY 1998 Enacted, 1997 Service Population			
Area	Human Service Funding	Service Population	Funding per Person
Sacramento	20,743,977	38,517	538.57
Billings	17,823,381	38,519	462.72
Anadarko	12,353,477	30,532	404.61
Eastern	19,979,230	50,196	398.02
Minneapolis	16,222,427	40,987	395.79
Albuquerque	21,315,093	60,237	353.85
Phoenix	39,605,789	117,184	337.98
Juneau	18,440,779	65,573	281.23
Portland	21,127,389	76,212	277.22
Aberdeen	38,599,398	140,949	273.90
Muskogee	6,410,125	33,960	188.76
Navajo	39,854,512	234,786	169.75
Self-Governance	73,414,808	515,095	142.53
TOTALS	346,081,197	1,442,747	239.88

The national average expenditure of TPA base human services funds is $239.88. Ten Areas receive more than the national average, and three Areas receive less. Self-Governance Tribes receive about one-third less than the national average, reflecting the participation of the large Muskogee Area Tribes in the Self-Governance program.

The following chart displays the effects of redistributing the TPA base human services dollars based on an average amount ($239.88) per person to all the "13" Areas":

REDISTRIBUTION OF HUMAN SERVICES FUNDS ON A PER-PERSON BASIS				
Area	Human Services Funding	Service Population	Redistribution ($239.88 per person)	Gain or (Loss)
Self-Governance	73,414,808	515,095	123,560,980	50,146,172
Navajo	39,854,512	234,786	56,320,465	16,465,953
Muskogee	6,410,125	33,960	8,146,248	1,736,123
Juneau	18,440,779	65,573	15,729,651	(2,711,128)
Portland	21,127,389	76,212	18,281,734	(2,845,655)
Aberdeen	38,599,398	140,949	33,810,846	(4,788,552)
Anadarko	12,353,477	30,532	7,324,016	(5,029,461)
Minneapolis	16,222,427	40,987	9,831,961	(6,390,466)
Albuquerque	21,315,093	60,237	14,449,651	(6,865,442)
Eastern	19,979,230	50,196	12,041,016	(7,938,214)
Billings	17,823,381	38,519	9,239,938	(8,583,443)
Sacramento	20,743,977	38,517	9,239,458	(11,045,519)
Phoenix	39,605,789	117,184	28,110,097	(11,495,692)
TOTALS	346,081,197	1,442,747	346,081,197	0

If the funds were redistributed, three Areas -- Muskogee, Navajo, and the Self-Governance compacts – would gain funds. Thus, one may not conclude that Self-Governance Tribes are systematically receiving a disproportionate share of Human Services funding.

DISTRIBUTION OF NATURAL RESOURCES FUNDS TO THE "13" AREAS

The first step in analyzing the distribution of TPA base funds for natural resource programs is to identify the land bases for the "13" Areas.

The following chart displays the land bases for the 12 Areas, with the land bases for the Self-Governance compacts broken out for each Area:

INDIAN TRUST LANDS BY AREA			
BIA Report of Indian Lands, 1996			
Area	Total Acres	Compact Tribes	Other Tribes
Aberdeen	5,939,246	0	5,939,246
Albuquerque	4,664,574	45,969	4,618,605
Anadarko	457,694	57,353	400,341
Billings	6,579,438	121,957	6,457,481
Eastern	576,296	0	576,296
Juneau	1,056,562	832,562	223,928
Minneapolis	1,495,660	891,566	604,094
Muskogee	646,207	446,376	199,831
Navajo	16,325,936	0	16,325,936
Phoenix	12,726,432	350,729	12,375,703
Portland	4,864,234	500,773	4,363,461
Sacramento	468,055	97,474	370,581
TOTALS	55,800,334	3,344,831	52,455,503

The following chart displays the land bases for the " 13 " Areas:

INDIAN TRUST LANDS BY AREA		
BIA Report of Indian Lands, 1996		
Area	Acres	Percent of Total
Navajo	16,325,936	29.3%
Phoenix	12,375,703	22.2%
Billings	6,457,481	11.6%
Aberdeen	5,939,246	10.6%
Albuquerque	4,618,605	8.3%
Portland	4,363,461	7.8%
Self-Governance	3,344,831	6.0%
Minneapolis	604,094	1.1%
Eastern	576,296	1.0%
Anadarko	400,341	0.7%
Sacramento	370,581	0.7%
Juneau	223,928	0.4%
Muskogee	199,831	0.4%
TOTALS	55,800,334	100.0%

BEST COPY AVAILABLE

The funding for Self-Governance compacts was allocated to the natural resources category, based upon the percentage of non-compact TPA base funds spent in each Area for natural resource programs. The following chart displays the allocation of TPA natural resources funds to the 13 Areas:

NATURAL RESOURCES FUNDING (Based on FY 1998 Enacted)		
Area	Allocation	Percent of Total
Portland	20,814,655	19.1%
Self-Governance	20,531,164	18.8%
Phoenix	11,136,281	10.2%
Aberdeen	9,716,602	8.9%
Navajo	8,394,845	7.7%
Albuquerque	8,303,802	7.6%
Billings	7,712,160	7.1%
Eastern	5,431,011	5.0%
Juneau	3,956,439	3.6%
Minneapolis	3,931,091	3.6%
Anadarko	3,570,482	3.3%
Muskogee	3,336,540	3.1%
Sacramento	2,363,689	2.2%
TOTALS	109,198,764	100.0%

The following chart displays the TPA base natural resources funding to each Area, divided by the total acres in each Area, to give a per-acre measure of the distribution:

NATURAL RESOURCES FUNDING PER ACRE FY 1999 Request, BIA Report of Indian Lands, 1996			
Area	Natural Resources Funding	Acres	Funding per Acre
Juneau	3,956,439	223,928	17.67
Muskogee	3,336,540	199,831	16.70
Eastern	5,431,011	576,296	9.42
Anadarko	3,570,482	400,341	8.92
Minneapolis	3,931,091	604,094	6.51
Sacramento	2,363,689	370,581	6.38
Self-Governance	20,531,164	3,344,831	6.14
Portland	20,814,655	4,363,461	4.77
Albuquerque	8,303,802	4,618,605	1.80
Aberdeen	9,716,602	5,939,246	1.64
Billings	7,712,160	6,457,481	1.19
Phoenix	11,136,281	12,375,703	.90
Navajo	8,394,845	16,325,936	.51
TOTALS	109,198,764	55,800,334	1.96

Thus, Juneau Area Tribes receive about 900 percent more per acre than the national average, and nearly 35 times as much as Navajo.

REDISTRIBUTION OF NATURAL RESOURCES FUNDS
ON A PER-ACRE BASIS

Area	Natural Resources Funding	Acres	Redistribution $1.96 per acre	Gain or (Loss)
Navajo	8,394,845	16,325,936	31,998,834	23,603,989
Phoenix	11,136,281	12,375,703	24,158,377	13,022,096
Billings	7,712,160	6,457,481	12,656,662	4,944,502
Aberdeen	9,716,602	5,939,246	11,640,922	1,924,320
Albuquerque	8,303,802	4,618,605	9,052,466	748,664
Sacramento	2,363,689	370,581	726,339	(1,637,350)
Minneapolis	3,931,091	604,094	1,184,024	(2,747,067)
Anadarko	3,570,482	400,341	784,668	(2,785,814)
Muskogee	3,336,540	199,831	391,689	(2,944,851)
Juneau	3,956,439	223,928	438,899	(3,517,540)
Eastern	5,431,011	576,296	1,129,540	(4,301,471)
Portland	20,814,655	4,363,461	8,552,383	(12,262,272)
Self-Governance	20,531,164	3,344,831	6,555,869	(13,975,295)
TOTALS	109,198,764	55,800,334	109,198,764	0

If the TPA funds for natural resources programs were to be redistributed on a per acre basis, five Areas would gain funds:

- The funding for the Navajo Area would increase by 281 percent.
- The funding for the Phoenix Area would increase by 116 percent.
- The funding for the Billings Area would increase by 64 percent.
- The funding for the Aberdeen Area would increase by 20 percent.
- The funding for the Albuquerque Area would increase by 9 percent.

Seven areas and the Self-Governance Tribes would lose funding if the natural resources funds were redistributed on a per-acre basis:

- The Juneau Area would lose 89 percent
- The Muskogee Area would lose 88 percent
- The Eastern Area would lose 79 percent
- The Anadarko Area would lose 78 percent
- The Minneapolis Area would lose 70 percent
- The Sacramento Area would lose 69 percent
- The Self-Governance Tribes would lose 68 percent
- The Portland Area would lose 59 percent.

Self-Governance Tribes do quite well in garnering shares of natural resources funds. However, this reflects primarily the heavy participation in Self-Governance in the Muskogee and Portland Areas, where all Tribes, not just Self-Governance, have been shown to receive a larger per-acre amount than Tribes in other Areas. Further, the minimal participation in Self-Governance in Areas like Aberdeen, Billings, Navajo, and Phoenix, where Tribes tend to have larger reservations, also skew the comparison to Self-Governance.

Finally, even though Self-Governance Tribes do very well in the "dollars-per-acre" analysis, that is more than offset by their poor position in the "dollars-per-person" analysis. Overall, therefore, the BIA concludes that Self-Governance Tribes do not systematically receive a disproportionate amount of TPA funds.

Reasons for Variation in Base Funding

In general, this study found that the distribution of TPA funds within each of the12 Areas was sound; Tribes with larger populations and/or larger reservations receive proportionately larger shares of TPA funds, with only a few exceptions. Distributions among the 12 Areas, however, varied widely. Several reasons exist for these variations.

The allocation of BIA resources among the Areas and the Tribes is based on a complex set of historical, geographical, demographic, political and programmatic factors. By itself, this statement may seem an evasion and a defense of the indefensible. It is, however, a fact. As a result of the accretion of responsibilities over 175 years, the allocation of BIA resources throughout the country is not and probably never has been in accordance with a particular unified scheme. The allocation is rather the sum of many individual decisions to achieve certain outcomes or satisfy particular goals for a Tribe at a point in time.

Today, "base funding" identifies the basic contract amount or amount of services on which a Tribe can rely from one year to the next - the base amount from which budget increases or decreases are calculated. This base funding amount is the result of years of legislation, appropriations, and BIA administration. The Tribes were not always consulted, and no one realized that the particular decisions being made would ultimately vest the Tribes with the right to particular shares of the BIA budget.

BIA Agency Offices

A significant influence on the modern Tribal "base funding" has been the existence of a BIA Agency on a reservation. Agencies were usually located on the larger reservations or on reservations deemed to require close attention because of the historical importance of the Federal-Tribal relationship at a particular time. With the agency as the focus, BIA resources at those reservations tended to grow over time. The original funding that evolved into the TPA base was the operating funding to support BIA staff, expenses, and costs for the agency and its services to the Tribe on that reservation. In contrast, where a Tribe was served by a multi-Tribe agency, the share of resources attributable to that Tribe is likely to be less, and equally important, almost impossible to identify due to the lack of data concerning how much time of each agency staff member spends on issues attributable to one Tribe or another in that agency's service area. The decisions of where to locate agencies were made over a very long historical period, and were not entirely based on assessments of relative need, population, or land area served by the Agency.

When the Indian Self-Determination Act was implemented in the mid-1970's, Tribes served by a single agency found it easier to identify Federal funds for contracting than Tribes served by multi-Tribe agencies. It was perhaps inevitable that the negotiation of contract budgets in the cases of multi-Tribe agencies would yield uneven results, leading to considerable variety in the subsequent TPA base funding for the various

Tribes. By and large, the dispositions of the Federal and Tribal negotiators played a large role in the outcome, as did the question of whether the contract was one of the first in the Area, or one of the last, after greater experience (and a diminishing supply of funds to support direct services) made contract budgets more tight. Throughout the implementation of both Self-Determination and Self-Governance, the BIA has lacked strict guidelines for negotiation of contract amounts, and the process tended to favor the contracting or compacting Tribes over those who chose not to contract.

Congressional Add-ons

Over the years, the Congress has earmarked funds to deal with specific local issues at the request of individual Tribes or even state or local government officials. These funds have since become part of the particular Tribes' base funding.

Programmatic Factors

At various times, especially in the past several decades, the Federal Government has emphasized the development of certain natural resources and provided additional funding for those programs. Additional funds were provided only to Tribes owning such resources, and those funds were made part of the Tribe's recurring TPA base funding. For example, the Portland Area received such funding for their extensive forestry and fisheries management programs. In contrast, few such funds were provided to the Anadarko Area, for example, which has only limited forestry and fisheries resources. In general, this phenomenon was most beneficial to Tribes on reservations that were already rich with natural resources and agricultural potential. Many of the larger Tribes, particularly in the Dakotas, received no additional funding.

On the other hand, several programs were removed from Tribal recurring bases during the 1980s. These programs included the Housing Improvement Program (HIP) and the Road Maintenance program; many Tribes had ranked these programs as top priorities and had allocated a substantial amount of their IPS (Indian Priority System, the forerunner of TPA) funding for them. When these funds were removed from the TPA, Tribes that had these programs listed as top priorities lost significant portions of their base funding.

Further, some Tribes received funding for a particular program through the TPA process, while other Tribes received the same program funding from other sources within the BIA budget. For example, a Tribe may have a stronger education program because its community college funding was received in TPA rather than being separately funded through another BIA account.

Tribes' land bases also impact program delivery, as the cost of services that must be delivered correlate with the size of a reservation. Obviously, delivery over a large land base creates more costs than does delivery in a small area. Similarly, mineral programs or forestry programs are impacted by the size of the areas mined or forested. Often, such factors have been built into the current budget processes. Additionally, over several decades, some Tribes have purchased and/or acquired additional land in trust, but have never received additional funding to manage these trust lands.

At various times, the Federal Government has emphasized human services or education programs. At those times, the BIA has requested additional funding for programs such as Adult Vocational Training, Housing Improvement, or Social Services. Tribes with higher populations received a high proportion of these funds, which were then made part of their recurring TPA base to meet ongoing needs.

Demographic Factors

Increased Tribal enrollment, whether through changes in membership criteria or natural population growth, has not been considered in distributing additional funds for TPA programs. Migration to and from reservations, particularly as economic opportunities change, has not been accounted for in any calculations of TPA funding.

Legal Obligations

As a result of treaties, court decisions, Executive policy decisions, and Congressional acts, the legal obligations and funding for particular Tribes have resulted in unique recurring funding levels for those Tribes. Additionally, these funds were incorporated into various Tribes' bases to address the prospect of litigation from these Tribes against the Federal Government for failure to support certain activities required by treaty, statute, or the government's trust responsibility.

Newly Recognized (or Acknowledged) Tribes

Timing has been important in establishing a funding base for "new" Tribes. Tribes that were newly recognized when there was funding available for that purpose tend to have more funds in their base than Tribes who were recognized when there was little or no "New Tribes" funding. In the latter case, funding for newly recognized Tribes was taken from funds already allocated to other Tribes in a multi-Tribe agency or from other Tribes in an Area. When this occurred, every dollar to the new Tribe had to be taken from an existing Tribe, tending to retard the development of the new Tribe's base; the existing base for the "old" Tribes was reduced not because of need-based factors, but merely to make room for another Tribe.

Further, the calculation of new Tribe funding requests has changed over time. At one point, a new Tribe received funding based on estimated tribal enrollment and the Tribe's land base. Currently, new Tribes of less than 1,500 members receive $160,000. New Tribes of more than 1,500 members receive $320,000.

Small Tribes Distribution

Since 1994, there has been an effort to target additional resources to small Tribes. The Congress directed the BIA to fully fund the small Tribes at $160,000 per year in FY 1998. The 1994 DOI/BIA/Tribal Task Force Report on BIA Reorganization recommended that the minimum base funding for small Tribes in Alaska be at least $200,000 due to the high costs in Alaska. This recommendation is consistent with other Federal Government cost formulas currently in use, which provide for a 25 percent incremental adjustment for high costs in Alaska. In the Juneau Area, 209 out of 226 Tribes received small Tribes funding, thereby accounting for the largest portion of Tribal government funding in this area.

Self-Determination and Self-Governance

As authorized under the Indian Self-Determination and Education Assistance Act, Tribes have authority to redesign programs, develop new programs, and reprioritize funding to meet local needs. As a result of implementation of this Act, some Tribes use this authority to reprioritize funds from one program category to another, which may result in variances among TPA bases.

Self-Governance Tribes are widely believed to receive more relative funding than other Tribes. This perception is largely due to the incentives and efforts to encourage Tribes to adopt Self-Governance during the pilot period. The Self-Governance pilot and the 1994 Amendments to PL. 93-638 provided these Tribes access to additional sources of BIA funding, such as Tribal shares of Central and Area Office funding and shortfall funding, which is not available to non-Self-Governance Tribes. The Self-Governance Tribes have been allowed to roll all their funding into the single program sub-element within TPA called Self-Governance Compacts, and when general increases were provided by Congress, the Self-Governance Tribes got larger shares of the increase because their bases were enhanced by Tribal shares and shortfall funding. Conversely, when TPA suffered a general decrease in FY 1996, Self-Governance Tribes were cut disproportionately due to their enhanced bases.

While there may have been advantages to early entry into Self-Governance, there is no evidence that there are systematic and continuous financial advantages in favor of Self-Governance, except when general increases are provided by the Congress. Self-Governance Tribes are allowed to include Non-Recurring funds in their Self-Governance Annual Funding Agreements, and some Self-Governance Tribes have funding from the non-base TPA programs (general assistance, housing improvement program, and road maintenance) included in their TPA bases. This provides an advantage by enlarging a Self-Governance Tribe's share of a TPA general increase over another Tribe that receives the same funding but does not have the funds in its base.

When reviewing and comparing Tribal funding data between Self-Governance and other Tribes, it is important to recognize certain differences in budget structure. Historically, the BIA attempts to show Tribal budget requests based upon how Tribes intend to use funds. If a non-Self-Governance Tribe requests an increase in Services to Children, Elderly and Families for the next fiscal year, the BIA reflects that request specifically in its budget request. However a similar request for a Self-Governance Tribe is not displayed in the BIA budget request. Worksheets supporting the request for Self-Governance Tribes reflect sources of funding, including shortfall funding, Tribal shares, general increases, and non-TPA programs. They do not, however, reflect how the funds are used and may not be compared readily with program elements for non-Self-Governance Tribes.

Chapter Summary

✓The wide variations among Indian Tribes and the lands on which they live present significant impediments to development of one or more funding formulas.

✓Based upon a range of socio-economic indicators, Indian people remain severely disadvantaged compared to the U.S. population as a whole.

✓Federal Indian policy places both a legal and a moral duty on the Bureau of Indian Affairs to fulfill the Federal trust responsibilities.

✓Legislative authorities lack specific programmatic goals and prohibit imposition of standards and reporting requirements which would be required for any for Tribe-by-Tribe comparison.

✓TPA base budgets are a result of history, geography, policies, politics, and timing.

✓Tribal governments, no less than any state or local government, deserve to have their priorities respected.

CHAPTER 2
HISTORICAL AND LEGAL BASIS FOR SERVICE TO TRIBES

Introduction
Major Federal Indian Policies
Fullfillment of Federal Responsibilities

Introduction

This chapter reviews the evolution of the relationship between the United States and the Indian Tribes and places the modern TPA funding mechanisms in their historical and legal context. Treaties, Federal legislation, executive actions, and judicial pronouncements have established and described the Federal obligations to Indian people. In this chapter we examine the obligations to Indian Tribes which the United States has assumed through these treaties, executive actions, and judicial pronouncements. From this review, it is clear that Federal appropriations under the TPA budget system is the modern mechanism for implementing many of the long-standing Federal obligations to Indian people.

The terms of the Constitution authorized the President, with the advice and consent of the Senate, to make treaties.[11] It further granted the Congress the power "to regulate commerce with the Indian Tribes."[12] Treaties ratified by the Senate were the primary instrument of relations with Tribes for almost 100 years. The vast majority of the treaties contained several common themes: (1) recognizing the capacity of the Tribes to make war and seeking peace in exchange for the protection of the United States as an ally;[13] (2) establishing borders or boundaries between the United States and Tribes, with the promise that such boundaries would not be abridged; (3) setting the ground rules for trade relations between the Indians and white settlers; (4) expressly recognizing the Tribes' continuing rights to hunt and fish on, and often off of, retained Tribal lands; and, (5) establishing the criminal jurisdictional authority of the United States and the Tribes.[14] Within the treaties, the United States generally promised the delivery of goods, services, and cash annuities as part of the consideration for the Tribes ceding vast territories of land.[15] In addition to cash annuities, provisions were commonly made for basic necessities, for health and education services, and for farming, stock raising, and other economic means to self-sufficiency.[16] Some treaties fixed a specific time limit for the provision of services, some did not.[17]

---

[11] U.S. Const. art. II, § 2, cl. 2.

[12] U.S. Const. art. I, § 8, cl. 3.

[13] See e.g., Treaty with the Choctaws, Sept. 27, 1830, art. 5, 7 Stat. 333, 334. This was, indeed, a reflection of the equal or near equal footing of the Tribes and the Federal Government at the time.

[14] *Cohen* at 64-67.

[15] *Id. at 66-67.* Of course, the degree to which the Tribes' cessions were voluntary, fraudulent, or forced, and the fairness of the consideration promised by the United States, varied as history advanced, with purposes for the cessions moving from obtaining peace, to voluntarily obtaining land encircled by non-Indians, then to

The Congress concluded the treaty-making era in 1871[18] and began to set Indian policy primarily through legislation.[19] Nevertheless, several basic principles established by the treaties remain in existence today: (1) that Indian Tribes are distinct governments and that matters affecting Tribal self-government are normally reserved to the Tribes, (2) that the Tribal/Federal relationship is bilateral in nature and founded on Tribal consent and consultation; (3) that states have limited jurisdiction over Indian affairs in Indian country, (4) that the United States has assumed broad responsibility to Tribes flowing from the consideration promised in the several treaties and (5) that the loss of Tribal land and hunting grounds caused Tribes to become dependent on the United States for their subsistence.

Major Federal Indian Policies

As noted above, the primary mechanism for dealing with the Tribes prior to 1871 was treaties negotiated by the Executive Branch. The Congress, however, through the Commerce Clause, has plenary authority over Indian affairs and the Congress has frequently exercised its plenary authority by shaping Indian policy

---

effectuating forced relocation, then to reservation confinement, and then to attempts at forced assimilation. The latter policies left the Tribes located in often isolated or destitute locales or surrounded by white settlement, generally with no means of making their land productive or of providing for their members.

[16] E.g., Treaty with the Creeks, August 7, 1790, art. 3, 7 Stat 35 ("That the Creek nation may be led to a greater degree of civilization, and to become herdsmen and cultivators...," the U.S. promised to give the Indians livestock and implements). Similar, Treaty with the Cherokees, July 2, 1791, art. 14, 7 Stat. 39. See also, Treaty with the Chippewa, Aug. 5, 1826, 7 Stat. 290 ("In consideration of the poverty of the Chippewas, and of the sterile nature of the country they inhabit, unfit for cultivation, and always destitute of game, and as a proof of regard on the part of the United States, it is agreed that an annuity of two thousand dollars, in money or goods, as the President may direct, shall be paid to the Tribe ... .");

[17] See the Creek and Cherokee treaties, preceding note, where the promises were not explicitly limited. The Treaty with the Six Nations, 1794, art. 6, 7 Stat. 44, was explicitly unlimited: The promise to provide clothing, stock, tools, etc., was to be implemented "yearly forever." See also Treaty with Poncas, 1825, 7 Stat. 247, art. II (the United States agreed to "... extend such benefits and Acts of kindness as may be convenient and may seem just and proper to the President ...").

[18] The Congress terminated treaty making in 1871. Ch. 120 § 1, 16 Stat. 544, 566, codified at 25 U.S.C. § 71 ("Provided, that hereafter no Indian nation or Tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, Tribe, or power with whom the United States may contract by treaty: Provided further, That nothing herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian nation or Tribe.")

[19] Interestingly, treaty making did not end, as some have suggested, because of the weakened status of the Tribes at the time, but rather to equalize power between the two houses of the Congress in order to appease members of the House of Representatives who resented the power exerted by the Senate in Indian Affairs due to its constitutional responsibility to ratify treaties. Cohen, at 106-107.

through legislative enactments. The Congress has enacted hundreds of statutes relating to Indian affairs over the past 210 years. However, the policies these statutes were intended to implement fall into essentially five groups: the removal policy, the assimilation policy, the policy of reorganization, the termination policy, and the policy of Self-Determination. Some of these policies lasted for decades, some for only a few years. Some overlapped with preceding and succeeding policies. Each, however, has left a lasting mark on Indian people and each has associated with it certain Federal responsibilities that arose as a result of implementation of those policies.

The Removal Policy (1800 - 1880's)

As the United States grew in the early years of the 19th Century, non-Indian settlers needed room in which to settle. The Tribes owned and occupied vast expanses of land east of the Mississippi and their presence was seen as an impediment to non-Indian expansion. As a result, many treaties required Tribes to surrender lands in the east in exchange for new homelands further west. Later in the 19th Century, non-Indian expansion was occurring from the west coast eastward as well as from the east coast westward. During this period the "Indian Territory" was created in what is now Oklahoma, and many Tribes were removed from their homelands and moved there. Some Tribes were removed as the result of conquest, and others were removed in response to executive orders creating reservations for them in areas far away from their aboriginal territories. Many of these reservations were on land that was considered poor quality by non-Indians and were selected because the settlers had no immediate use for those lands.

The removal policy created many unique problems and explains some of the land occupancy patterns that persist to this day. For example, many Indians hid in the forests, deserts or swamps or fled from the newly created reservations back to their homelands. This explains why there are Cherokees in North Carolina and Oklahoma, why there are Seminoles in Florida and Oklahoma, and why there are Apaches in Arizona, New Mexico, and Oklahoma. Many of the Tribes that were removed were stripped of the means of livelihood provided by their original homelands and forced into inhospitable areas where their customary means of supporting themselves did not exist. As a consequence, the Federal Government had to assume the obligation to provide basic necessities to the Tribes and to improve the lands so the Tribes could once again attempt to become self-supporting.

The Assimilation Policy (1887 - 1934)

As the great migration of non-Indians into Indian Country continued in the latter part of the 19th Century and the Congress was pressured to make more land available for settlement, the Congress was faced with several realities regarding the status of Tribes and their members: (1) the Tribes still occupied vast areas that the United States wanted to settle with its citizens and to cross with railroads; (2) some Tribes were still hostile and powerful enough to threaten the peace; and, (3) individual Indians whose Tribes had already given up their territories, forcibly or otherwise, were often in desperate need of food, clothing, and other living essentials. In order to deal with the Indian "problem," the policy became to civilize the Indians and to "assimilate" them into the surrounding non-Indian culture.[20] The vehicle chosen to effect this change was the General Allotment Act of 1887 (GAA). 25 U.S.C. § 331 et seq.

The GAA sought to achieve assimilation by dividing the Tribal land bases into parcels of land and "allotting" them to individual Tribal members.[21] In order to protect these new land owners until they learned the ways of the white man, the Congress provided that these allotments should be held in trust by the United States for the individual Indian owners for 25 years. At the expiration of the trust period, title was to be conveyed in fee simple to the assimilated Indian owners. In addition to assimilating individual Indians, the Assimilation Policy's other intended effect was to weaken and ultimately destroy Tribal government. Thus, the legislation and government policies encouraging assimilation supported harsh educational measures aimed at destroying native languages and Tribal traditions[22] and criminalized cultural and religious activities.[23]

The impacts of the GAA were devastating. From 1887 to 1934, the Indian land base shrank from 138 million acres to 48 million acres. Rather than being assimilated, many Indians simply lost their land and much of their culture. Tribal governments remained intact, but were severely weakened.[24] As the devastation of the assimilation policy on the lives and communities of Indian people began to slowly emerge into public view, the Congress reassessed the policy and began to change the direction of Federal Indian policy. This first became evident with the passage of the Snyder Act in 1921 which, though in some respects echoing prior policy,[25] recognized the need for a more effective funding authorization mechanism for the United States to satisfy the tremendous need to provide for basic Indian daily living requirements—a need that was the direct result of land cessions and the assimilation policy.[26]

---

[20] Public sentiment was borne out in official policy: "[t]he American Indian is to become the Indian American." Commissioner Indian Affair. Ann. Rep., H.R. Exec. Doc. No. 1, 50th Cong., 2d Sess. VI (1890)

[21] Allotment was not an entirely new idea. Some treaties provided for allotments on a limited basis. What marked the difference with earlier allotment schemes and the GAA was the scale of the allotment effort.

[22] As adult Indians struggled to adjust to their new life in a non-communal property setting, surrounded by non-Indians and separated from their Tribal ways and traditions, their children were shipped off to denominational mission and boarding schools where, for years at a time, they were forbidden from seeing their parents, speaking their native language, wearing their native clothing and hair lengths, or practicing any form of cultural or traditional ways. See e.g., Cohen, at 140-141

[23] Cohen, at 141, 333.

[24] Aside from the immediate impacts of the loss of land and weakening of Tribal governments in the 1800's, the assimilation policy's impacts are felt to this day through the problems associated with the fractionated title of the remaining land base and the attendant difficulties in managing these fractionated land holdings. This modern fallout from the assimilation policy has led to litigation such as the current Cobell v. Babbitt suit as well as necessitating millions of dollars to be invested in trust asset management improvements.

[25] Ch. 115, 42 Stat. 208, codified, as amended, at 25 U.S.C. § 13. There was, by no means, a complete end to assimilationist policy with the passage of the Snyder Act however. For example, during the same year, engagement in certain traditional and religious dances and ceremonies was made punishable by imprisonment. Cohen at 141. Shortly thereafter, in 1924, as a logical extension of assimilation, Indians were made citizens of the United States. 8 U.S.C. § 1401.

The Reorganization Policy (1934 – 1953)

Awareness of the failure of assimilation spread with the issuance in 1928 of the famous Meriam Report, a private two-year study of the BIA which examined Indian policy and its effects.[27] In addition to underscoring the ineffectiveness of past policy, particularly the loss of Indian land holdings,[28] the report criticized the paternalism of Indian administration, pressed for economic development in Indian country, encouraged Indian use of Indian lands,[29] urged support of community life, and advocated for an increase in the standard of Indian health.[30]

In 1933, President Roosevelt appointed John Collier as Commissioner of Indian Affairs. Collier's view of the future of Indian policy was to reverse the paternalism that had so dominated Indian policy since the end of the treaty-making period.[31] He also sought to reinvigorate Tribal governments, allow the Tribes to take control of their own destiny, and to foster Tribal self-sufficiency. The main vehicle through which Collier sought to encourage such economic development and revitalization of Indians and their Tribes was the Indian Reorganization Act of 1934 (hereinafter IRA),[32] which aimed at providing "a mechanism for the Tribe as a governmental unit to interact with and adapt to a modern society, rather than to force the assimilation of individual Indians."[33] Thus, among other things, the IRA (1) prohibited the further allotment of Tribal land, (2) extended the periods of trust restrictions on existing allotted lands, (3) authorized the Secretary to obtain by purchase or gift additional lands to build Tribal land bases, declare new reservations, and make additions to existing reservations, (4) directed the Secretary to promulgate regulations for "sustained-yield" management of Indian forest resources and to restrict livestock grazing to the estimated range carrying capacity, (5) authorized grants and a revolving loan fund for development of Indian businesses and corporations, (6) provided educational grants and Indian preference in employment in the Indian service, and (7) authorized Indian communities to approve constitutions and bylaws in order to organize for their respective welfare, as well as to incorporate under Federal charters to engage in business ventures.[34]

---

[26] The Snyder Act requires that the BIA, under the supervision of the Secretary of the Interior, "direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States" for several purposes, including education, health, economic development and profitability of Indian property; development and maintenance of Indian water supplies and buildings; the hiring of government officials, physicians, Indian police, Indian judges; and the suppression of drug and alcohol trafficking

[27] Institute for Government Research, The Problem of Indian Administration (L. Meriam ed.) (Baltimore: The Johns Hopkins Press, 1928).

[28] Cohen, at 144.

[29] Because of the fractionation of individual Indian owned lands and because of a lack of financial resources by the Tribes, much Indian land was leased to non-Indians.

[30] Id. At 144-145

[31] Id. at 146-147; Clinton, Price & Newton, American Indian Law, at 152-153 (3d ed., Michie, 1991).

[32] *Ch. 576, 48 Stat. 984, codified, as amended, at 25 U.S.C. § 461 et. seq.* Many of the provisions of the IRA excepted Tribes in Oklahoma from their application, but two years later the Congress passed the Oklahoma Indian Welfare Act which authorized similar treatment of Tribes therein. Ch. 831, 49 Stat. 1967, codified, as amended, at 25 U.S.C. §§ 501-509.

[33] *Cohen*, at 147.

The Termination Policy (1953 - 1960)

Assimilationist sentiment flared up again after World War II, this time embodied in the view that the United States should rid itself of all responsibility for Tribes.[35] On August 1, 1953, House Concurrent Resolution 108 declared the "sense of Congress" that a number of the more self-sufficient Tribes "at the earliest possible time ... be freed from all Federal supervision and control and from all disabilities and limitations specially applicable to Indians."[36] This was followed by Public Law 280, unilaterally extending State jurisdiction to a number of Indian reservations in five states.[37] Rather than the more self-sufficient Tribes being terminated, in many cases the smaller, poorer, least prepared Tribes were terminated. Again, the impacts of the termination policy on many of the terminated Tribes was similar to the impacts of the assimilation policy–loss of land, and dissipation of Tribal funds that were removed from Federal trust accounts. Fortunately, public sentiment and politics soon shifted away from termination and back to the recognition that a Federal responsibility exists to protect and support Tribes until the Tribes themselves are prepared to end the relationship. Most of the terminated Tribes have since been restored by the Congress or the courts,[38] although many are still struggling to reacquire a land base and recover from the financial losses caused by the termination policy.

The Policy of Tribal Self-Determination (1960 to Present)

In 1961, the Public Housing Administration concluded that Indian Tribes had the authority to organize

---

[34] Many of the provisions of the IRA have been extended to all Tribes. For example the corporate charter provisions of the IRA, 25 U.S.C. § 477, have been amended to allow all Tribes to incorporate, and the land acquisition authority of the IRA, 25 U.S.C. § 465, was extended to all Tribes by section 203 of the Indian Land Consolidation Act, 25 U.S.C. § 2202.

[35] See generally, *Clinton at 158; Cohen at 159, 170-175*

[36] Over the next few years the Congress withdrew Federal support for (i.e. "terminated") over 100 Tribes and bands, including two major ones (the Menominee and Klamath Tribes), adversely affecting over 11,000 Tribal members and over 1.3 million acres of reservation land. Clinton, supra.

[37] 18 U.S.C. § 1162 (criminal laws) and 28 U.S.C. § 1360 (civil laws). Public Law 280 was amended in 1968 to require Tribal consent to any further state jurisdiction. 25 U.S.C. §§ 1321 and 1322.

[38] E.g., *Menominee Restoration Act of 1973, Pub. L. No. 93-197, 87 Stat. 770, codified at 25 U.S.C. §§ 903-903f; Oklahoma Indians Restoration Act of 1977, Pub. L. No. 95-281, 92 Stat. 246, 25 U.S.C. §§ 861-861c.* In 1988 Congress revoked the unilateral termination policy as part of the Tribally Controlled Schools Act, 25 U.S.C. § 2502(f).

Tribal housing authorities on reservation and, for the first time, the program of the Housing Act of 1937, a general Federal housing program, became available in Indian and Alaska Native communities. In 1962 Tribes were made eligible for grants under the Public Works Acceleration Act, another general Federal program. Finally in 1964 the Economic Opportunity Act, the centerpiece of President Johnson's War on Poverty, provided for grants from the Office of Economic Opportunity directly to Tribes for community action programs and for Tribal participation in the Neighborhood Youth Corps administered by the Department of Labor. The groundwork for what was to become the era of Indian Tribal Self-Determination was, thus, laid in the 1960s.[39]

In 1970, President Richard M. Nixon delivered a special message to the Congress on Indian affairs which called for a break from the extremes in Indian policy of termination and paternalism, and the creation of "a new era in which the Indian future is determined by Indian acts and Indian decisions."[40] Nixon recounted that "centuries of injustice ... [in which] the American Indians have been oppressed and brutalized, deprived of their ancestral lands and denied the opportunity to control their own destiny" had placed them at the bottom of nearly every social measure. He rejected termination of the Federal responsibility to the Tribes, pointing out that the responsibility was not simply an act of generosity to be withdrawn on a unilateral basis whenever seen fit:

> The special relationship between Indians and the Federal government is the result instead of solemn obligations which have been entered into by the United States Government. Down through the years, through written treaties and through formal and informal agreements, our government has made specific commitments to the Indian people. For their part, the Indians have often surrendered claims to vast tracts of land and have accepted life on government reservations. In exchange, the government has agreed to provide community services such as health, education and public safety, services which would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans.

---

[39] Richard Schifter, Trends in Federal Indian Administration, 5 S. Dak L. Rev. 1 (1969)

[40] Special Message to the Congress on Indian Affairs, Pub. Papers 564 (Richard M. Nixon), 6 Pres. Doc. 894 (1970). The Nixon speech echoed some sentiments of the two previous Chief Executives. Specifically, President Kennedy committed to upholding treaty obligations, protecting the Tribal land base, and promoting economic development; President Johnson stated in a special message to the Congress that the new goal for Indian affairs should be to end the debate on termination, and eradicate paternalism, while stressing self-determination. See Cohen, at 182-185. See also supportive statements of other Presidents. President Carter said, "I consider it my solemn duty and obligation as President to see that we fulfill our trusteeship responsibilities within the framework of self-determination for American Indians." Message of August 30, 1978, to the National Congress of American Indians. President Reagan said, "The Constitution, treaties, laws, and court decisions have consistently recognized a unique political relationship between Indian Tribes and the United States which this administration pledges to uphold." 19 Weekly Compilation of Presidential Documents, 98 (Jan. 24, 1983). President Clinton said, "today I re-affirm our commitment to self-determination for tribal governments. Today I pledge to fulfill the trust obligations of the Federal government. Today I vow to honor and respect tribal sovereignty based upon our unique historical relationship." 30 Weekly Compilation of Presidential Documents, 941 (April 29, 1994) (emphasis added).

In addition to recognizing the "immense moral and legal force" of the agreements underlying the "special relationship between Indian Tribes and the Federal government," President Nixon recognized two other bases for rejection of termination. First, the practical effects of "removal of the Federal trusteeship responsibility" had been to leave the affected Indians in worse economic and social conditions than before. Second, the fear of termination that hung over every Tribe created a climate of apprehension in which:

> Any step that might result in greater social, economic or political autonomy is regarded with suspicion by many Indians who fear that it will only bring them closer to the day when the Federal government will disavow its responsibility and cut them adrift.
>
> * * *
>
> This, then, must be the goal of any new national policy toward the Indian people: to strengthen the Indian's sense of autonomy without threatening his sense of community. We must assure the Indian that he can assume control of his own life without being separated involuntarily from the tribal group. And we must make it clear that Indians can become independent of Federal control without being cut off from Federal concern and Federal support.

To effectuate this goal, President Nixon proposed several recommendations including, among others, the repeal of House Concurrent Resolution 108 of 1953 and reaffirmation by the Congress that the unique historical relationship between the Federal Government and Tribes shall not be abridged without the consent of the Tribes.[41] The President also proposed the enactment of self-determination legislation to authorize Tribes to contract to administer Federal programs on their own behalf and be adequately funded to provide such programs; increasing local Indian control of Indian education; passage of economic development legislation for the development of infrastructure and planning; additional funding for Indian health services and Indian education in health careers; and "the elevation of Indian affairs to their proper role within the Department of the Interior" through establishment of the position of Assistant Secretary for Indian Affairs.

The culmination of the President's initiatives was passage of the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA).[42] In that Act, the Congress found that, "after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people", Federal domination of Indian services had retarded the progress of Indians and Tribes by denying them the opportunity to develop the leadership skills of self-government or have an effective voice in the planning and implementation of Indian programs. The Congress additionally found that "the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons." Finally, the Congress acknowledged that it had failed to satisfy "the Federal responsibility for and assistance to education of Indian children."[43]

---

[41] Id.

[42] *Public Law 93-638*, 88 Stat. 2203, codified, as amended, at 25 U.S.C. § 450 et seq.

[43] 25 U.S.C. § 450(a)(1), (a)(2), (b)(2).

The Congress recognized the "obligation of the United States" to assure maximum Indian participation in the provision of Federal services to Tribal communities so as to render such services more responsive to Tribal needs and desires. The Congress has also declared a "major national goal of the United States" to be to provide the educational opportunities to Indian children that will permit them to compete and excel in a manner essential to their social and economic well-being.[44] Importantly, under the ISDEAA:

> The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian Tribes and to the Indian people as a whole through the establishment of meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian Tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.[45]

Accordingly, the ISDEAA directs the Secretary of the Interior and the Secretary of Health and Human Services to enter into self-determination contracts with Tribal organizations, upon the Tribes' request, to assume the responsibility to run Indian programs.[46] Contractible programs specifically include, among others, programs authorized by the Johnson-O'Malley Act and the Snyder Act. In carrying out such a contract, the amount of funding provided to a Tribe "shall not be less than the appropriate Secretary would have otherwise provided."[47] Finally, the ISDEAA provides that nothing in the contract "may be construed to terminate, waive, modify, or reduce the trust responsibility of the United States to the Tribe(s) or individual Indians."[48]

The success of Tribes and Tribal organizations administering Federal programs for their benefit led the Congress to amend the ISDEAA to make permanent two self-governance demonstration programs administered by the Secretary of the Interior and the Secretary of Health and Human Services.[49] The amending legislation (ISDEAA Title IV) is based upon the Congress' findings that:

---

[44] *25 U.S.C. § 450a(a) and (c)*

[45] *25 U.S.C. § 450a(b)*

[46] *25 U.S.C. § 450f(a)(1)*

[47] *25 U.S.C. § 450j-1(a)*

[48] 25 U.S.C. §§ 450l(c)(a)(2) and (c)(d)(1)(B) (noting also that the "Secretary shall act in good faith in upholding such trust responsibility.")

[49] *Public Law 100-472*, Title II, § 209, Oct. 5, 1988, 102 Stat. 2296, as amended (see 25 U.S.C. § 450f (note)), *Public Law 103-413*, Title II, § 204, Oct. 25, 1994, 108 Stat. 4272), codified at 25 U.S.C. § 458aa, et seq.

> (1) the tribal right of self-government flows from the inherent sovereignty of Indian Tribes and nations;
>
> (2) the United States recognizes a special government-to-government relationship with Indian Tribes, including the right of the Tribes to self-governance, as reflected in the Constitution, treaties, Federal statutes, and the course of dealings of the United States with Indian Tribes.[50]

Thus, the Congress' declaration of policy with regard to the permanent establishment of self-governance includes the maintenance and improvement of "its unique and continuing relationship with, and responsibility to, Indian Tribes," and further, "to ensure the continuation of the trust responsibility of the United States to Indian Tribes and individual Indians."[51]

In sum, through the ISDEAA legislation, the Congress has expressly acknowledged its obligation to carry out its unique responsibilities to Tribes and their members by supporting the development of those Tribes, their leadership, and Tribal economies, by enhancing Indian education; and by involving the Tribes and their members in the administration of Federal services. The Congress has met its obligation in part, through the Tribal Priority Allocations (TPA) process.

Fulfillment of Federal Responsibilities to Tribes Through the TPA Process

The Federal Government's commitment to maintaining its obligations to Tribes and Indian people is expressed not only through the ISDEAA, but through laws that govern distinct aspects of the United States' responsibilities to the Tribes. The Congress has, in fact, acknowledged and further defined its responsibilities in virtually every area of Indian policy, including health,[52] law enforcement and criminal justice,[53] education,[54] housing,[55] economic development,[56] human services,[57] natural resources,[58] and cultural preservation.[59]

---

[50] 25 U.S.C. § 458aa(note)

[51] 25 U.S.C. §450aa (note)

[52] Indian Health Care Improvement Act, 25 U.S.C. Sect. 1601, et seq.

[53] Indian Law Enforcement Reform Act, 25 U.S.C. Sect. 2801, et seq., Indian Tribal Justice Act, 25 U.S.C. Sect. 3601, et seq.

[54] ISDEAA; see also Tribally Controlled Schools Act of 1988, as amended, 25 U.S.C. Sect 2501, et seq.; Higher Education Tribal Grant Authorization Act, 25 U.S.C. Sect. 3301, et seq.

[55] Native American Housing Assistance and Self-Determination Act, 25 U.S.C. Sect. 410, et seq.

[56] Indian Gaming Regulatory Act, 25 U.S.C. sect. 2701, et seq.

[57] Indian Child Welfare Act, 25 U.S.C. Sect 1901, et seq., Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. Sect. 3201, et seq.; Indian Alcohol and Substance Abuse Prevention and Treatment Act of

TPA comprises nearly half of the BIA's operating budget and is the principal source of funding for Tribal government operations and the provision of services to Tribal members. Consistent with its commitment to maintain the government-to-government relationship with Tribes, the Congress has authorized Tribes to prioritize funding among the various TPA programs according to their unique needs and circumstances. Thus, Tribes prioritize funding among eight general TPA subactivities: (1) Tribal government; (2) human services; (3) education; (4) public safety and justice; (5) community development; (6) resources management; (7) trust services; and (8) general administration. Each subactivity, in turn, encompasses several programs. These various TPA programs are authorized by, and in many instances derive directly from, legislation which, by express terms, is aimed at carrying out the Federal government's responsibilities and obligations to Tribes and individual Indians. A brief description of many of these programs and a partial listing of supporting legislation are included in Chapter One.

While the BIA and the Indian Health Service provide most of the Federal support to Indian Tribes, there are many other Federal programs available to Tribal governments. A review of the 1998 *Catalog of Federal Domestic Assistance*, produced an 18-page list of programs that specifically identify Tribal governments as eligible applicants. However, unlike the TPA programs, which provide a recurring funding base to Tribal governments, most of the other agencies' programs provide project grants, loans, or technical assistance. While BIA does not have information to indicate how Tribes fare when Federal grants are awarded on a competitive basis by other departments, BIA assumes that a number of Tribes would be at a disadvantage, because they generally lack full-time, professional staff dedicated to writing strong grant proposals. Nonetheless, these programs are available and have seen increased outreach efforts by a number of Federal agencies, which leads BIA to believe that Tribal participation in these other programs will show steady increases.

BIA has also compiled another list of Federal programs. The second list includes programs that identify state and/or local governments as eligible applicants, but appear to exclude Tribal governments. The BIA is somewhat chagrined to note that about a dozen of these programs are within the Department of the Interior. While BIA will work internally to see if the eligibility status can be extended to Tribal governments, it would be most helpful if the Congress could prevail upon the authorizing committees for these other departments to see if it might further open these programs to Tribes. Copies of both lists of programs are included as Appendix 2.

1986, as amended, 25 U.S.C. Sect. 2401, et seq.

[58] American Indian Agricultural Resource Management Act, 25 U.S.C. Sect 3701, et seq.; National Indian Forest Resource Management Act, 25 U.S.C. Sect. 3101, et seq.

[59] Native American Languages Act, 25 U.S.C. Sect. 2990l, et seq.

Chapter Summary

✓TPA programs are founded on and result from a complex and lengthy statutory and historical bases.

✓TPA is the embodiment of the policy of Self-Determination and is intended to implement the unique obligations of the United States arising from its relationship with the indigenous Indian Tribes.

✓Congress has on occasion experimented with policies that were intended to materially (and unilaterally) alter the Federal/Tribal relationship.

✓Congress has consistently returned to the concept of dealing with the Tribes as governments and has consistently reaffirmed its obligations to the Tribes.

CHAPTER 3
MEASURES OF TRIBAL NEED

Process Used to Estimate Tribal Needs
Data Collected from 18 Tribes
Eight Northern Pueblos

In proposing alternative methods to distribute funds, the Congress instructed the BIA to consider the "relative needs of Tribes and tribal members." In order to make a meaningful determination of need, the following conditions would have to exist:

> Each TPA program would have quantifiable goals or objectives;
>
> Each program would have one or more standards allowing for Tribe-by-Tribe comparisons;
>
> TPA funds would be used only for activities directly supporting the stated goals; and
>
> Standard reports would be prepared by Tribes to compare program performance and to ascertain when the program goals and objectives have been achieved.

If one assumes that funds provided to Tribal governments through the BIA should be sufficient to allow Tribal governments to provide their members many of the services comparable to those services provided by local governments throughout the nation, Tribal governments are receiving from the BIA only about half of the needed amount. Of course, some Tribes do have substantial resources outside of those amounts provided by the BIA, including those from IHS and other Federal agencies, as well as income from Tribal enterprises. These sources are discussed in Chapter Four, Measures of Tribal Revenues.

In the effort to address Tribal needs, a subcommittee was formed from the TPA Workgroup to attempt to quantify a level of need for the programs and functions and activities that are supported with TPA funds and compare that need to the amount of funding being received by Tribes in their TPA allocations and other sources of income. As indicated in the following tables, BIA funding for Tribal programs falls dramatically short of Tribal needs. The workgroup attempted to quantify these programmatic shortfalls to the extent possible and then show how certain Tribes use their own resources to supplement their TPA funding to address the shortfall. Even with the Tribal contributions to these programs, substantial unmet needs remain.

The task was to try to quantify a reasonable and objective measure of need for each program, functions, and activity that is supported with TPA funds, and determine what portion of that need was in fact being met with the current TPA funding levels. From this, it is hoped that a measuring instrument would be developed that would allow for a Tribe-by-Tribe comparison of the level of need being funded through the

TPA process, and funding levels of Tribes against non-Indian programs.

The BIA chose a sample of Tribes for detailed analysis. The Tribes varied in population and amount of Tribal trust acres and individual allotted trust lands. Eighteen Tribes provided information. The first step was to attempt to identify functions and activities that other governments (Federal, state, local) provide that are the same as, or similar to, the functions and activities Tribal governments provide with TPA funding. After a comparable function was identified, a unit cost for the provision of that service was determined. Using the total TPA funding amount for each service, the average unit cost that Tribes are receiving was compared to the amount being expended in the non-Indian community. A simple calculation was then made to show the amount of funding adjustment needed to bring Tribes to a comparable spending level for a particular function:

AMOUNT SPENT PER UNIT BY OTHER GOVERNMENT ORGANIZATIONS - AMOUNT SPENT PER UNIT BY TPA = UNMET NEED

While the format safely appeared to be viable, it was difficult to determine if such a definition of need could be used as a measuring device at the local level. In some instances, due to the uniqueness of the specific program or function, it was very difficult to find a comparable standard in the non-Indian community. The Tribes from each area were then asked to voluntarily provide Tribal specific data to test the concept. In addition to the TPA funds being spent in providing the identified services, the Tribes were also asked to indicate the amount of Tribal funds that were being used to support that service. No distinction was made as to the source of the Tribal revenues. Because this is a very small sample of Tribes, the methodology does not provide a definitive conclusion and extrapolations cannot be made from this information, but there are some indicators and trends that clearly indicate a more in-depth analysis needs to be prepared involving a larger number of Tribes.

The following tables reflect the information that was collected. Table 1 provides an aggregate of all Tribes. It also reflects the amount of FY 1998 TPA funding, the unmet need on a national aggregate basis, and the amount of Tribal revenue funds that Tribes use to supplement specific programs. As can be seen, even with Tribes supplementing the programs with their Tribal revenues, there is still a substantial unmet need.

Table 1 • National Unmet Tribal Needs Summary

Program	*FY 1998 TPA Enacted*	*Unmet Need*
Tribal Government		
Other Aid to Tribal Government	22,209,000	130,589,810
Subtotal	**$22,209,000**	**$130,589,810**
Human Services		
Services to Children, Elderly and Families	28,063,000	13,140,000
Indian Child Welfare Act	14,235,000	21,500,000
Subtotal	**$42,298,000**	**$34,640,000**
Education		
Johnson O'Malley	18,534,000	11,968,000
Higher Education Scholarship	29,495,000	101,050,000
Adult Education	2,663,000	1,340,000
Subtotal	**$50,692,000**	**$114,358,000**
Public Safety and Justice		
Tribal Courts	11,846,000	17,317,228
Subtotal	**$11,846,000**	**$17,317,228**
Community Development		
Adult Vocational Training and Direct Employment	10,859,000	4,407,102
Economic Development/Loan Guarantee	3,666,000	4,064,422
Subtotal	**$14,525,000**	**$8,471,524**
Resource Management		
Agriculture Range	19,682,000	6,950,000
Forestry	20,762,000	292,193,940
Water Resources	3,784,000	19,087,941
Wildlife and Parks	4,998,000	36,500,000
Minerals and Mining	2,078,000	1,471,000
Subtotal	**$51,304,000**	**$356,202,881**
Trust Services		
Realty/Appraisals	21,875,000	26,630,704
ANILCA	1,506,000	0
ANCSA Historical & Cemetery Sites	606,000	0
Subtotal	**$23,987,000**	**$26,630,704**
TOTAL	**$216,861,000**	**$688,210,147**

*32% of Unmet Need is Funded

BEST COPY AVAILABLE

Table 2 reflects the information as outlined above, but for the 4 programs that are not distributed in the Tribes's base, but rather by formula

Table 2 • Preliminary Comparisons of Tribal Needs Non-Base Funding Summary

Program	*FY 1998 TPA Enacted*	*Preliminary Indicator of Need*
	Tribal Government	
Contract Support Funding (CSF)	105,829,000	25,894,697 (20%)
Subtotal	**$105,829,000**	**$25,894,697**
	Human Services	
Welfare Assistance	93,960,000	0
Housing Improvement Program (HIP)	16,030,000	418,708,175
Subtotal	**$109,990,000**	**$418,708,175**
	Community Development	
Road Maintenance	25,456,000	74,619,000
TOTAL	**FY98 TPA Enacted $241,275,000**	**Preliminary Indicator of Need $519,221,872**

Table 3 and 4 reflect a sample of Human Services and Public Safety and Justice program activities in TPA, the complete detailed information for the national aggregate is included in Appendix 3. This table identifies what comparable agency or program was used, the per unit TPA funding amount, the comparable funding amount and the total unmet need. A narrative is attached to the corresponding program that describes the program activity, elaborates on the comparable standard, and identifies any shortfalls in the identified comparable. If a program activity has a specific methodology for distribution to less than all Tribes, the program is footnoted with an explanation.

BEST COPY AVAILABLE

HUMAN SERVICES
Table 3

Human Services						
Services to Children, Elderly and Families $28,063,000	State Temporary Assistance to Needy Families (TANF)	Caseload per staff GA for service only cases requiring substantial casework or client counseling at least once per month	30:1 118 BIA caseworkers x $30,000 avg salary/ benefits = $3,540,000 (Based on 3,540 case)	15:1 236 wkrs x $30,000 = $7,080,000 (Based on 3,540 case)	118 wkrs x $30,000 =	$3,540,000
		GA or service only, etc, moderate casework every two months	50:1 160 wkrs x $30K = $4,800,000 (based on a caseload of 8,000)	25:1 320 wkrs x $30K= $9,600,000 (based on a caseload of 8,000)	160 wkrs x $30K	$4,800,000
		GA, etc. minimum casework every six months	100:1 160 wkrs x $30K = $4,800,000 (based on a caseload of 8,000)	50:1 320 wkrs x $30K= $9,600,000 (based on a caseload of 8,000)	160 wkrs x $30K	$4,800,000
Indian Child Welfare Act $14,235,000	Child Welfare League of America	Caseload per staff Under age 5 no more than 20 active cases per caseworker.	60:1=50 case workers x $43,000 avg. Sal./Bene. = $2,150,000 (based on a caseload of 3,000)	20:1= 150 wkrs x $43K avg Sal/Bene = $6,450,000 (based on a caseload of 3,000)	100 wkrs x $43K	$4,300,000
		Over age 5, no more than 15 cases.	60:1=50 wkrs x $43K = $2,150,000	20:1=150 wkrs x $43K = $4,450,000	100 wkrs x $43K	$4,300,000
		No more than 30 adoptive families per caseworker Under age 5	60:1=150 wkrs x $43K = $6,450,000.	30:1=450 wkrs x $43K = $19,350,000	300 wkrs x $43K	$12,900,000
Welfare Assistance	See Non-Base TPA Funding Table					
Housing Improvement Program	See Non-Base TPA Funding Table					

Indian Child Welfare Act

This program provides the resources to protect Indian children and prevent the separation of Indian families, as authorized under *Public Law 95-606*, the Indian Child Welfare Act of 1978 (ICWA). BIA and Tribal social services programs are mandated to respond to all reports of child abuse and neglect in Indian Country. In 1998, there were more than 27,000 referrals to the more than 500 BIA and Tribal programs for child abuse and neglect investigations. More than 40 percent of the referrals involved some form of substance abuse.

Standard/Problem

BEST COPY AVAILABLE

The number of Indian children at risk is almost three times greater in Indian communities than in the general population. Caseloads and caseworkers were used for illustration purposes and clerical, supervisory staff and other administrative costs were not included in the calculations. The BIA baseline data is an average caseload of ICWA cases as compared to the same caseload of high risk child welfare cases in a state program. The BIA's average was used to project nationwide totals for comparison. Adoption cases involve complex research and interaction to complete permanency planning and final placement of children. It is not unusual for adoptions and related cases, in which other alternatives are explored and selected over adoptions, to consume substantial effort by caseworkers. The baseline reflects an attempt to accurately measure this work in quantifiable terms.

Services to Children, Elderly and Families

The goal of this program is to ensure that individual Indians who need assistance receive aid for basic essential needs such as food, clothing, shelter, and other services that improve the conditions of Tribal members. These funds support approximately 950 BIA and Tribal social services and other human services staff. They coordinate cooperative work efforts and serve on multi-disciplinary teams with various departments relative to services to Indian children and families. These funds help develop and provide training material resources on social services to children, elderly, and families.

Standard/Problem

Temporary Assistance to Needy Families (TANF) workers in state programs have caseloads amounting to one-half of the general assistance caseload for Tribal and BIA staff. Caseloads and caseworkers were used for illustrative purposes and clerical, supervisory staff and other administrative costs were not calculated. The BIA baseline data is an average caseload of general assistance cases as compared to the same caseload of TANF cases in a state program. The BIA's average was used to project nationwide totals for comparison purposes.

PUBLIC SAFETY AND JUSTICE:

Table 4

Public Safety and Justice

Tribal Courts $11,846,000	New Mexico County Metropolitan Courts	Average Salary of Judges	$32,000/year per judge	$90,154/year per judge	$32,000 salary - $90,154 salary	$58,154
	Nebraska County Courts Washington District Courts	Average amount of funding	158 Tribes receive a total of $6,582,772. With an average of $41,663 per Tribe	158 State Courts receive a total of 23.9 million with an average of $151,265 per State court	$6,582,772 per Tribe minus $23.9 million per State	$17,317,228
Law Enforcement[60]						
Community Fire Protection[61]						

Tribal Courts

The goal of this program is to promote Indian Self-Determination and strengthen Tribal governing systems. Although limited funding has delayed the development of Tribal justice systems by many Tribes, new Federal initiatives (welfare reform and community policing) have increased the demands on Tribal justice systems that perform services far in excess of available resources. More than 250 Tribal justice systems and Courts of Indian Offenses are supported by BIA funds.

Standard/Problem

Throughout the past several decades, a number of attempts have been made by nationally recognized organizations to compare Tribal courts and state courts. These attempts have been made along the lines of number of cases heard, types of cases heard, service population, proximity to major centers of population, geographic location, salaries, and support staff, to name a few of the comparative factors that have been sought. Although some Tribal courts may look and act like state courts in some respects, there is no complete comparison to be made between the two. Tribal courts range from traditional court of Pueblo New Mexico which handles internal social issues involving custom and tradition and serve a population of 200 members, to the Cherokee Nation courts of Oklahoma which serve a population of 50,000 Tribal members and resemble Anglo-Americancourts As a result of the Indian Child Welfare Act, some Tribal courts are exercising jurisdiction over particular type of cases involving child placement but must submit all other civil cases to state court jurisdiction (Indian Child Welfare Act). The courts of limited jurisdiction in New Mexico, Washington, and Nebraska were selected because the size of these courts most closely corresponds to Tribal courts.

Table 5 is a summary by program activity of the total amount of funds the 18 volunteer Tribes received in TPA funding, the unmet need, and the aggregate of Tribal funds being used to help meet the identified need.

---

[60] This program is not included in the analysis of TPA funds because in FY 1999 the Congress moved the program from TPA to Special Programs and Pooled Overhead activity within the Operation of Indian Programs account.

[61] This is a limited program administered only by a few Tribes. In subsequent data collection, this program will be included for analysis.

As is evident in the summary, even with the combined TPA funding and Tribal revenues, the unmet need far exceeds the total funding of the programs.

Table 5 • Consolidated Report of Preliminary Need and Tribal Supplement of 18 Volunteer Tribes

Tribal Priority Allocations	BIA FY 1998 Enacted	Preliminary Need	Tribal Supplement
Other Aid To Tribal Government	2,182,870	19,160,159	7,164,974
Services to Children, Elderly and Families	7,561,118	40,131,653	940,509
Indian Child Welfare Act	1,669,341	25,529,665	384,151
Johnson O'Malley	5,491,119	2,168,817	174,500
Higher Education Scholarship	13,990,780	71,773,462	4,884,418
Adult Education	300,719	66,800	15,000
Tribal Courts	3,294,906	9,799,235	5,665,747
Adult Vocational Training (AVT) and Direct Employment	1,005,802	956,219	79,000
Economic Development/Loan Guarantee	553,610	3,631,654	14,693
Agriculture Range	6,087,272	5,892,041	1,202,785
Forestry	2,021,415	51,763,529	2,758,050
Water Resources	1,032,315	7,145,562	2,545,062
Wildlife and Parks	1,135,186	52,773,562	4,443,634
Minerals and Mining	1,787,051	973,364	733,364
Realty/Appraisals	446,602	6,104,485	5,626,585
Total	$48,560,106	$297,830,341	$36,632,472

As is indicated in Table 5, TPA funds are less than 16 percent of the resources needed by the Tribes in the sample to fund their basic governmental services. The tables demonstrate that Tribes with resources of their own are using those funds to supplement the funds provided by TPA. The need far exceeds the combined Federal and Tribal resources.

While the data collected demonstrates that Tribal governments receive less than they need, one must be cautious in drawing precise conclusions from this information. This must be considered a preliminary report, and additional testing and data collections needs to be accomplished. Certain questions which require further study. For example, are the comparables used the most viable? How do we deal with those services and programs that are unique to Indian communities?

Tribal specific information indicates that this type of analysis requires additional refinement before it could be used conclusively as a comparison of TPA programs funding levels compared to comparable programs in the non-Indian community. If the Congress concurs that this approach is fruitful, extensive data collection process will be undertaken over the next few years.

The Eight Northern Pueblos Pilot

The Eight Northern Indian Pueblos of New Mexico have proposed a mechanism to implement a needs assessment for their Pueblos. They have nearly completed an assessment for the Pueblo of Nambe and have begun explaining their process to the Administration and the Congress.

Their proposal is to base budget formulation on Tribal needs. Needs will be determined by the Tribal leadership and presented with explanation and specific accomplishments to the Administration and the Congress. The annual appropriations can be then compared to total needs and specific results determined. The reporting of accomplishments would establish the validity of identified needs and provide Tribal accountability.

The fundamentals of this proposal are that after the needs data base system is developed, the Pueblos will assume responsibility for program service delivery and determine how to provide services. The Assistant Secretary - Indian Affairs would review and approve the initial needs assessment and needs data base. The BIA will provide oversight of the programs to protect the interest of the Federal government. The Agency Superintendent would become a trust compliance officer and oversee the contract activities.

The needs assessment itself involves community meetings so that the Tribal members being served can participate in developing the services they need. The Pueblo government refines the expectations of their members through development of an inventory of needs and a plan for satisfying those needs. The assessment includes not only the program service requirements, but also describes administrative service requirements, facilities requirements, project requirements, and time requirements.

Once the assessment is agreed upon by the community and approved by the Pueblo government, it is presented to the Administration and the Congress. A draft of the Pueblo of Nambe plan was provided in late June. The Eight Northern Pueblos intend to replicate this process at the other seven Pueblos and believe they can complete this process within the next 18 months to two years. After BIA and Congressional review of the Nambe assessment, it may be appropriate to consider Nambe and Eight Northern Pueblos as a pilot project for implementing a needs based budget process.

Chapter Summary

✓Preliminary indications are that current funding meets only one-third of identified need.
✓18 Tribes nearly match BIA support for local government services.
✓Eight Northern Pueblos propose community involvement in shaping needs determination.

CHAPTER 4
MEASURES OF TRIBAL REVENUE

Current Reporting Requirements
Information Derived from Review of Single Audits
Revenue from Gaming Tribes

Determining the type, extent and magnitude of Tribal revenues is difficult. Tribes have no inherent obligation to reveal their revenues to non-members, and the law does not require revelation unless Tribes are conducting gaming under the Indian Gaming Regulatory Act or conducting Tribal businesses out of Tribal general fund accounts used also for Federal programs covered by the Single Audit Act.

In an era when the BIA had a continuous presence on the reservation and managed an Indian Tribe's affairs, BIA personnel knew about all Tribal business activities. In the era of Self-Determination and Self-Governance, when Tribes conduct the management of their Federal programs, the BIA often does not know the extent of Tribal businesses. This is particularly true in Alaska and California.

Further, there is no assurance that financial statements and reports exist for all Tribal business. Even if they exist, that there is no assurance the format and content of the statements and reports are comparable to any other business enterprise. Finally, the BIA has few staff with the expertise and capability to read and analyze Tribal enterprise financial statements and determine the amount of revenue made available to Tribal operations.

For Tribal gaming enterprises there is less of a problem. Tribes are required to provide annual financial statements to the National Indian Gaming Commission. These statements are protected and were made accessible to the BIA only because of the provision in Section 129 authorizing the BIA's access. A Memorandum of Agreement establishing protocols for the BIA's use and non-disclosure of certain information was necessary. A summary of the information collected is reported later in this Chapter.

While information concerning Tribal revenues is difficult to collect, developing a coherent policy of how to use the information in allocating Federal funding allocation is equally difficult. It is tempting to say that at some point a Tribe does not need Federal funding or a TPA base when the base is a fraction of one percent of the Tribe's revenue. However, using Tribal business revenue to offset TPA base funding is not a popular concept in Indian Country even among the Tribes that are most needy and would benefit from a reallocation of TPA funding. The Tribes adamantly oppose means testing for other than programs intended for individuals.

In addition, the BIA's review shows that those Tribes that have significant revenues are not receiving BIA funding intended for low income people, and if all of the non-trust related BIA funding to such Tribes were withheld, no large sum of money would become available to allocate elsewhere. Further, there are issues to resolve concerning Federal obligations such as the trust responsibility and the need to provide law enforcement on reservations. Also, Tribes have responsibilities for services and activities beyond those funded from TPA base allocations that require the revenues generated from Tribal businesses. For example, TPA does not fund infrastructure like water and sewer systems; interest and repayment on debt incurred by the Tribe; Tribal buildings such as education, detention, and community facilities; or a myriad of other programs and activities necessary to run a government and improve a community.

Single Audits

The Single Audit Act of 1984 (Act) (*Public Law 98-502*; 31 U.S.C. 7501 *et seq.*) required State and local governments and Indian Tribes (grantees) that received $100,000 or more in Federal funds in a given year to have an audit performed for that year. OMB Circular A-128, "Audits of State and Local Governments," provided guidance for implementing the Act. This Act and implementing regulations were effective for fiscal periods ending prior to July 1, 1996. In 1996, the Act was amended by *Public Law 104-156*, the Single Audit Act Amendments of 1996 (Amendments). The Amendments increased the threshold for audits from $100,000 to $300,000 in Federal awards expended. On June 24, 1997, implementing guidance was issued through OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," and OMB Circular A-128 was rescinded. The Tribal government audits reviewed for the purpose of preparing this report covered awards made in fiscal years 1994-1996 and were, therefore, subject to the original Act and OMB Circular A-128.

Prior to passage of the Act, grantees were often required to have program-specific audits conducted for each Federal awarding agency. The Act was designed to reduce the audit burden placed on grantees, while providing all funding agencies with information on the grantee's system of internal controls, compliance with those laws common to all Federal assistance programs, and adherence to specific laws and regulations governing major Federal programs. The purposes identified in the Act are:

> *(1) to improve the financial management of State and local governments with respect to Federal financial assistance programs;*
>
> *(2) to establish uniform requirements for audits of Federal financial assistance provided to State and local governments;*
>
> *(3) to promote the efficient and effective uses of audit resources; and*
>
> *(4) to ensure that Federal departments and agencies, to the maximum extent practicable, rely upon and use audit work done pursuant to this Act.*

Because the Act is focused on the appropriate use of Federal funds, grantees are provided latitude in the identification of those parts of the organization that are included in the audit. Title 31 U.S.C. § 7502(d) states:

> *(1) Each audit conducted pursuant to subsection (a) for any fiscal year shall cover the entire State or local government's operations except that, at the option of such*

government –

> *(A) such audit may, except as provided in paragraph (5)*[62]*, cover only each department, agency, or establishment which received, expended, or otherwise administered Federal financial assistance during such fiscal year . . . .*

State, local, and Tribal governments may, therefore, exclude from the Single Audit those organizational components which do not receive, expend, or otherwise administer Federal funds.[63]

Scope of this Review

The description and analysis of the information available in the Single Audits on Tribal enterprises is based upon a review of all Tribal audits issued by the Office of Inspector General prior to November 30, 1998 which covered fiscal year 1994, 1995, or 1996, and included at least some information on non-Federal revenues and expenditures.

There were 554 Federally-recognized Indian Tribes in 1996. Single audits submitted by 311[64] Indian Tribes (56 percent) met the identified criteria. While the amount of Federal funds administered by some Tribes does not reach the threshold for submission of Single Audits, there are other reasons why not all Tribes submit audit reports. As a result of Tribes entering into consortia, the 53 Self-Governance compacts awarded in FY 1996 covered 190 Tribes. Only the organization to which the BIA directly transfers funds is required to submit an audit to the Department. Further, not all Tribes administer BIA-funded programs. According to BIA's *Annual Report*, 36 Tribes had no contract, compact, or grant agreements with the BIA during FY 1996.

Based upon a review of the audits submitted, it appeared that 79 of the 311 Tribes operated no businesses.

---

[62] If a State or local government has multiple organizations which administer Federal awards, paragraph (5) provides that a series of audits of individual departments will meet the requirement for a Single Audit.

[63] The 1996 Amendments make no substantive change in this area, although the wording is slightly different: " . . . at the option of such non-Federal entity such audit shall include a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered Federal awards. . . ."

[64] Eleven other Tribes submitted audits, but the information contained in the reports was limited to Federal funds. Three Tribes, Miccosukee, United Crow Band, and United Villages have established non-profit corporations to administer Federal awards; eight Tribes, Chitimacha Tribe of Louisiana, Old Harbor Tribal Council, Oneida Indian Nation of New York, Ottawa Tribe of Oklahoma, Santa Clara Indian Pueblo, Taos Pueblo, and Shakopee Mdewakanton Sioux Community, and Upper Sioux Tribe, have designated one Tribal department to administer Federal awards.

BEST COPY AVAILABLE

Two-thirds of these Tribes are located either in Alaska[65] or California. A listing of these Tribes was sent to BIA Area Directors with a request to identify those Tribes which the Area Directors knew to be operating some type of commercial enterprise. The responses from the Area Directors indicated that 24 of the 79 Tribes did have some type of business activity that was not disclosed in the audit reports.[66]

Audit reports submitted by 232 Tribes provided varying amounts of information on Tribal enterprises. While almost 1,100 different Tribal enterprises were identified, only 60 percent of the Tribes contained in the audits all of the enterprises. No financial information on enterprises was provided by 16 percent of the Tribes, and the remainder of the audits, 24 percent, included some but not all of the enterprise data. The BIA is implementing a process to ensure compliance with the Single Audit Act. This is the first year of the process and the BIA plans to make necessary adjustments to achieve the desired results.

In 1997, the General Accounting Office (GAO) issued a report entitled "Indian Gaming Industry," (GAO/GGD-97-91). GAO identified 187 Tribes that had gaming operations as of December 31, 1996. While the Single Audit Reports identified 141 Tribes with gaming operations, the differences were more significant than these two numbers would seem to indicate, because only 122 gaming Tribes were identified both in the GAO report and in the Single Audit Reports.

To the extent that a Tribal government deposits income from fees, licenses, and taxes directly to the Tribe's general fund, it is often possible to identify the gross amount of such collections from the financial statement included in the Single Audits. The provisions of Section 129, however, require the BIA to exclude from calculations of net income those amounts "derived from lands, natural resources, funds, and assets held in trust by the Secretary of the Interior." It is not possible to ascertain from the audits what portion of the fees, licenses, and taxes may be classified as being derived from trust lands or natural resources.

Conclusions on Single Audits

The Single Audits cannot be used to determine Tribal revenue arising from businesses, licenses, fees, and taxes, because not all Tribes are required to submit Single Audits and Tribes may exclude from Single Audit coverage organizational components that do not administer or expend Federal funds. Further, with the exception of testing of internal controls, other testing performed by the auditors is concentrated on the appropriate use of Federal funds and generally does not disclose information on the accuracy of the revenues and expenses associated with Tribal enterprises.

---

[65] Pursuant to the provisions of the Alaska Native Claims Settlement Act (Title 43 U.S.C. § 1601 *et seq.*) Regional and Village for-profit corporations were established under the laws of the State of Alaska. These corporations have neither the powers nor the responsibilities of Tribal governments. The corporations are not required to submit audits to the Federal government and this report includes no information on revenues or expenses of businesses operated by these corporations.

[66] It is also possible that the business ventures were begun subsequent to the period covered by the Single Audit Report.

Concerns about Tribal Revenue Use

Although there are severe limitations in drawing generalizations from the data contained in the Single Audit Reports, the following issues drawn from our review of single audits is provided for consideration in formulating recommendations for changes in the BIA's current fund allocation methods. A number of concerns complicate any attempt to consider Tribal revenues in allocating TPA funds.

Losses From Tribal Enterprises

Of the 232 Tribes reporting enterprise activity, 103 Tribes reported net losses in one or more years between FY 1994 and FY 1996.[67] Some Tribes may choose to subsidize non-profitable enterprises in order to provide jobs or services to Tribal members that would not otherwise be available.

Fluctuations in Profitability

Fifty of the 232 Tribes reported profits in some years and losses in other years. There is no assurance that all Tribal businesses will remain profitable. A reduction in Federal assistance due to prior year profits might well jeopardize essential services in the event of a concurrent reduction in business revenues.

Long-Term Debt

The FY 1996 audit reports identified over $1 billion in long-term debt for 128 Tribes. Almost one-third of the Tribes reporting long-term debt also reported net losses from business enterprises during FY 1996. The distribution of the debts is provided below:

Amount of Debt	Number of Tribes
Less than $500,000	54
$500,000 - $999,999	14
$1 million to $4,999,999	35
$5 million to $19,999,999	18
More than $20 million	7

Net Revenues

Of the 86 Tribes reporting profits in FY 1996, 55 percent made less than $1 million, and only 7 percent reported profits in excess of $50 million. A further breakdown of net revenues is provided below:

---

[67] Some reported "losses" were the result of eliminating gaming revenue from the income calculations.

Net Revenues	Number of Tribes
Less than $50,000	24
$50,000 - $99,999	3
$100,000-$499,999	17
$500,000-$999,000	3
$1 million - $4,999,999	12
$5 million - $9,999,999	13
$10 million - $19,999,999	5
More than $20 million	9

It is not reasonable to reduce Federal funding to Tribes based on revenues from marginally profitable businesses.

Retained Earnings

Any plan to offset Federal funding with business revenues must address the question of retained earnings. If Tribes are to expand existing businesses and create new employment opportunities on Indian reservations, they must have the ability to reinvest in Tribal business rather than being required to use most or all of business income to finance government services.

Tribal Gaming Revenues

While Indian Tribes have been involved in business development for decades, only those Tribes on reservations with abundant natural resources had much income beyond that provided by the Federal government. The small amounts derived from smoke shops, gas stations, and the sale of Indian crafts and jewelry did little more than cover the cost of these operations, with a few exceptions. Although development of self-sustaining reservation economies has been a goal of the Federal government for almost 40 years, the efforts of Federal agencies such as the Office of Economic Opportunity, the Economic Development Administration, the Small Business Administration, and the BIA have had minimal impact.

More recently, Federal policy, as opposed to Federal programs, has significantly altered the economic condition of a number of Indian Tribes. Congressional endorsement of gaming on trust lands has brought hundreds of millions of dollars of non-Federal revenue to parts of Indian Country. In passing the Indian Gaming Regulatory Act (IGRA), the Congress declared that its purpose is to promote Tribal economic development, self-sufficiency, and strong Tribal governments. IGRA has arguably come closer to meeting its stated purpose than any other Indian policy legislation. The profits from gaming operations are to be directed solely to Tribal government operations and programs; the general welfare of the Tribe and its members; Tribal economic development; and charitable organizations and local government agencies.

The BIA agriculture, education and welfare programs can be traced back to the removal of the Tribes to Indian Territory. The West was sparsely settled and the only government was the Federal Government.

Indian agents delivered food and clothes and Indian schools were organized. As time passed and the west was settled, the Congress authorized the Secretary to enter into contracts with State and local governments to provide health, education, and welfare services to Indian Tribes. Viewed in the context of the authorizing statutes, these efforts can be viewed not as a long-term Federal obligation to Indian Tribes, but rather, as activities that were undertaken to provide an education for the children, for "the relief of distress," and to maintain law and order. As the western states were admitted to the union, many viewed Indian Tribes as solely a Federal responsibility, but in other cases, states assumed increasing responsibility for education and law enforcement.

With the passage of the Indian Reorganization Act in 1934, funds were provided to assist Indian Tribes in organizing governments, developing constitutions, and recording information on members of the Tribe. Twenty years later, the assimilation and integration policies led to the development of vocational training and employment programs which were designed to prepare Indian people to compete in the general labor market away from the reservations.

Development of national programs providing assistance to all needy citizens, such as Aid to Families with Dependent Children and food stamps removed a significant amount of responsibility from the BIA, but special assistance programs continued for those needy Indians who did not otherwise meet the national eligibility criteria -- much as the "general relief" programs operated by many state or local governments. To this day, the bulk of BIA funds are directed to the functions of education, welfare, law enforcement, and direct and indirect support of Tribal governments.

Over the past 25 years, Federal Indian policy has also evolved to a point where Indian Tribes are recognized as eligible for a wide range of other Federal programs which provide support to State and local governments. While the availability of these other resources from agencies such as the Department of Housing and Urban Development, the Environmental Protection Agency, and the Department of Transportation, may have reduced the pressure on the BIA budget, virtually none of the BIA programs have been eliminated. BIA funds are often considered to be those resources which local governments would raise through property taxes to support local government services. Indeed, the Indian Self-Determination and Education Assistance Act specifically states that Indian Tribes may use BIA funds as the "local" match for any other Federal program.

The most recent comprehensive data on State and Local Finances by Level of Government covers 1994-1995. Nationwide, on a per capita basis, local governments spent $2,217 in support of programs similar to those funded by the BIA. This amount includes Federal and State funds which are passed through to the local government to support local programs. The Federal share of local spending averaged $77 per capita; the State share averaged $681 per capita; and local revenues supported the remainder of $1,459 per capita. Not surprisingly, the single largest component of local government spending was elementary and secondary education which accounted for 45 percent ($997) of the total per capita amount. A review of 16 of the states where Indian Tribes are located identified a range of local per capita spending from a high in New York of $3,314 to a low of $1,472 per capita in Louisiana (local shares: $2,274 and $969, respectively).

AVERAGE STATE PER CAPITA EXPENDITURES BY LOCAL GOVERNMENTS BY FUNDING SOURCE

Entity	Total Per Capita	Local Share	State Share	Federal Share
United States	2217	1459	681	77
Arizona	1947	1249	634	64
California	2388	1431	871	86
Connecticut	2117	1484	563	70
Florida	2090	1511	523	56
Idaho	1704	987	678	39
Iowa	1830	1217	556	57
Louisiana	1472	969	452	51
Michigan	2071	1045	959	67
Minnesota	2551	1570	925	56
Mississippi	1507	871	588	48
New Mexico	1721	814	827	80
New York	3414	2274	1026	114
Oregon	2014	1235	636	143
South Dakota	1616	1231	314	71
Washington	2103	1382	660	61
Wisconsin	2354	1409	880	65

The most significant source of non-trust revenue to Indian Tribes is gaming enterprises. The BIA reviewed all audit reports submitted to the National Indian Gaming Commission for fiscal years 1994 - 1996. For 1996, 166 Tribal gaming audits were available. These audits indicated that 28 Tribes realized a net loss from their gaming ventures.[68] Profits of the remaining 138 Tribes covered a broad spectrum as shown below.

Gross Net Gaming Revenues

More Than ($)	Less Than ($)	No. of Tribes
0	1,000	33
1,000	100,000	9
100,000	500,000	12
500,000	1,000,000	6
5,000,000	10,000,000	31
10,000,000	20,000,000	10
20,000,000	50,000,000	22
50,000,000		15
	Total	138

---

[68] A number of currently successful gaming enterprises realized a loss in the initial one of two years of operation, so it is likely that some of these Tribes are now recognizing a positive cash flow from these ventures.

BEST COPY AVAILABLE

On a per capita[69] basis, the earnings ranged from less than $1.00 to more than $10,000.

Net Revenues Per Member

More Than ($)	Less Than ($)	No. of Tribes
0	100	19
100	500	19
500	1,000	11
1,000	3,000	16
3,000	5,000	7
5,000	10,000	12
10,000	15,000	9
15,000	20,000	6
20,000	25,000	3
25,000	30,000	2
30,000	35,000	3
35,000	40,000	0
40,000	45,000	4
45,000	50,000	2
50,000	75,000	7
75,000	100,000	3
100,000	200,000	6
200,000	500,000	2
500,000		7
	Total	138

Certainly, some Tribal governments whose gaming enterprises annually generate large revenues per capita could be deemed to be "self-sufficient." In terms of BIA programs, these Tribes could fully fund the cost of their Tribal government and to use their own revenues to match other Federal programs; indeed, for many, TPA funds provided by the BIA are an unsubstantial percentage of their Tribal government budgets. For the top 54 most successful gaming Tribes, TPA base funding averages less than one percent of Tribal funds available with a range of between 24 percent to less than .1 percent.

---

[69] Tribal enrollment, as reported in the 1995 "Indian Service Population and Labor Force Estimates" was used to calculate the per capita amounts. For those Tribes that did not submit enrollment data, the BIA's service population estimate was used.

Even for those Tribes though, there are certain Federal responsibilities that cannot readily, or perhaps even legally, be transferred to the Tribes. Support from the Operation of Indian Programs (OIP) account[70] cannot be withdrawn, for example, from the following:

Elementary and secondary schools currently funded by the BIA;
Grants to Tribally Controlled Community Colleges;
Law enforcement on those reservations where the Federal government retains criminal jurisdiction; and
Activities related to maintaining ownership, leasing, and income data for trust and restricted lands.

Furthermore, even prosperous Tribes may be able to demonstrate circumstances which would warrant a continuation of Federal support for programs or activities other than those identified above.

Thus, even for Tribes that earn substantially more per capita revenue from gaming operations than the average amount spent by local governments from their own revenue sources, there remains a great disparity between reservation communities and non-Indian communities. Tribes lag behind in the development of comparable physical infrastructure (roads, housing, utilities, communications systems, etc.). Tribal communities also face greater social problems resulting from limited educational and employment opportunities, and alcohol and drug abuse. Further, Tribes have suffered from having their affairs run by paternalistic Federal employees for 150 years. The results shifting Federal Indian policies, coupled with limited resources and investments in Indian communities and in Indian people, cannot quickly be reversed by a few good years of casino revenues.

Based on FY 1996 data, there are 54 Tribes that generated gaming revenues in excess of $10,000 per member. The Operation of Indian Programs (OIP) funding for these 54 Tribes for activities other than those identified above, is only about $10 million. Thus, the "rich" Tribes take only a small percentage of total TPA funds, and $10 million is an insubstantial amount in the face of the needs that exist elsewhere in Indian Country.

Further, a profound disruption to the Federal-Tribal relationship would result from a redistribution. The

---

[70] These Tribes would continue to be eligible for support appropriated to other Federal agencies, but administered by the BIA, such as road construction financed by the Department of Transportation and fire presuppression and suppression work supported by appropriations made to the Bureau of Land Management.

TPA funds provided these Tribes make real the promises, both expressed and implied, made to the Tribes by the United States and have significance far beyond the nominal value. Quite literally, the money does not matter; it is the principle of Federal financial commitment to Tribal well being that carries great weight.

Finally, the Tribes point out correctly that no Federal funding provided to state and local governments is dependent on the relative means of those governments. Certainly the BIA cannot articulate a sound distinction that supports a policy of punishing success where Indians are concerned. This relatively small amount of money that might become available for redistribution is so insubstantial that even as to those Tribes likely to benefit from a redistribution of these funds, there was unanimous opposition from Tribal leaders. Therefore, the BIA cannot recommend implementing such policy of means testing.

Chapter Summary

✓There is no statutory or regulatory requirement for Tribal governments to report all income.

✓Single Audit reports are available for only half of the Tribes; these audits contain varying amounts of information on non-Federal revenues.

✓Income derived from trust lands and resources cannot be segregated from other income.

✓In an effort to create more employment opportunities, Tribes often operate businesses at a loss.

✓Gaming profits range from less than $1 per member to over $500,000 per member.

✓Revenue must be used not only for current operations, but also to repair 150 years of general neglect of Indian people and Indian reservations.

CHAPTER 5
RESULTS OF TRIBAL CONSULTATION

What Programs Should be in the TPA Base
General Increases vs. Targeted Funding
Changing the Budget Presentation
Justification of Tribal Requests
Reporting of Tribal Accomplishments
Broad vs. Narrow Program Definitions
Small Tribes Initiative
Reallocation of Current Funding
Means Testing
Voluntary Redistribution
Data Collection

As part of the consultation process for this report, the Assistant Secretary - Indian Affairs sent a letter to each Tribe on March 2, 1999. The purpose was to provide an explanation of the TPA report process and to elicit Tribal responses to a series of questions that had been raised as concerns during the discussions with the Tribal TPA Workgroup. A copy of the entire letter is included as Appendix 4. The following are the questions and a summary of the responses. In all cases the TPA Tribal Workgroup's response is included. The Assistant Secretary received over a hundred additional responses. After the Workgroup's response, each question has additional comments from other respondents and the BIA's conclusion and/or recommendation.

1. Should we continue to exclude funding for contract support, General Assistance, the Housing Improvement Program, and Road Maintenance from Tribal base funding?

TPA Tribal Workgroup Response

The Tribes have differing positions regarding this issue. These programs are currently excluded from TPA and funds are distributed based on need. Some Tribes are concerned with the under-funding of these programs and the ability to provide adequate services. On the other hand, some Tribes would like to have the ability to include these funds in their Tribal base. The Joint DOI/BIA/Tribal Task Force 1994 report recommended the inclusion of these programs in TPA and identified a process for determining the fairness of allocation regarding these programs.

The greater issue involves empowerment of Tribal governments and Tribes' discretion to use funds. Tribes should have the ability to choose whether or not they would like to include these funds in their base. Finally, the Tribal Workgroup representatives support current joint efforts between the Tribes and the Administration regarding funding and policy on contract support costs. The National Congress of American

Indians National Policy Workgroup on Contract Support is coordinating with the BIA, Indian Health Service, and Office of Inspector General to develop both short and long-term recommendations on contract support costs. The NCAI Workgroup anticipates a final report to the Congress regarding these solutions to be completed in late spring.

Other Tribal Comments

The TPA Tribal Workgroup Response accurately captured the trend of Tribal responses. Some of the Tribes fault the BIA for not completing the 1994 Task Force's recommendations to include these programs in the base. Other say that the BIA attempts to include these programs in the TPA base were not acceptable.

BIA Views

The BIA agrees with the Congress and intends to keep Contract Support, General Assistance, Housing Improvement, and Road Maintenance outside Tribal TPA base funding. Congressional directions in appropriations report language makes clear that the Congress believes these programs should remain formula driven and not part of the TPA base funding.

2. Should we continue to spread general increases in TPA funding proportionately to all Tribes, or should we target the Tribes with the greatest unmet need for such increases? Should we first meet all inflationary costs of all Tribes before using a need-based formula to distribute the remainder?

TPA Tribal Workgroup Response

There is wide-spread agreement that additional funding is needed to address overall unmet need. The Tribal Workgroup representatives developed five options for distribution of general TPA increases. Each of these options deals with how possible TPA funding increases could be allocated and supports maximum flexibility for Tribal decision-making in determining funding priorities within TPA programs. This flexibility is consistent with the principles and implementation of Self-Determination and Self-Governance. The goal of each of these options is to ultimately increase the funding for Indian Country to the level enjoyed by mainstream America, while increasing the lower-funded Tribes at an accelerated rate to eliminate funding disparities among Tribes.

Further, an adjustment for inflation is also an essential factor to consider in any TPA increase to help address standard inflationary and population growth cost increases in Tribal government operations and service delivery. While some Tribes have received minimal pay cost increases to their TPA base, these adjustments do not cover overall inflationary amounts.

Other Tribal Comments

Most Tribal respondents supported "no change" in the distribution of funds. They are comfortable with the pro-rata shares based on current TPA base funding.

BIA Views

The BIA believes that future increases in TPA should be directed to Tribes with the greatest need. While the current allocation formula only rarely produces gross disparities in TPA funding, the BIA cannot say that TPA funds go where they are needed most. While the BIA supports the basic notion that Tribes should receive funds to meet reasonable increased cost, future appropriations are unlikely to increase sufficiently to provide for both inflationary cost increases and a meaningful general increase in TPA.

The BIA believes that much of the controversy related to the allocation of TPA came from two questions that the Congress asked the BIA. The first asked how general increases to TPA were allocated to the Tribes. The response was that the distributions are proportionate based on each Tribe's TPA base. The second question asked how Tribes get an established base. The response was that the base is dependent upon historical funding levels.

Earlier in this report it was explained the influences on Tribes' TPA bases. The BIA has argued, and the Tribal Workgroup agreed, that Tribal needs should be used to allocate future TPA increases. However, the Tribal Workgroup also argued that the BIA should first meet all inflationary cost of Tribes. Each of the Workgroup's proposed distribution formulas either assumed that inflationary costs would be met prior to distribution of the remainder of any future increase, or to similar effect, that some percentage of any increase would be distributed pro rata with the remainder distributed on the basis of need.

As to inflationary costs, two practices mitigate the impact of inflation on existing programs. First, when the Congress approves the BIA request for uncontrollable costs, the request includes funding for pay-related inflationary costs to Tribes with *P.L. 93-638* contracts and compacts. So to the extent that the Congress concurs on these costs, the cost of pay inflation is met. It is not necessarily the amount Tribes want, as the parameters of such costs are restricted by the level of funding available for the program rather than full staffing level needs. The second point is that contract support indirect cost rates are negotiated and adjusted annually. Increases in costs, including inflation, are accepted by the Inspector General. If full funding for contract support were made available by the Congress, those inflationary costs would also be covered each year. Therefore there are mechanisms to address inflationary costs. However, there is no mechanisms address actual need. Where needs are greater for the Tribe with a smaller TPA base, then a proportionate TPA general increase makes that Tribe relatively worse off. Consequently, if the Congress intends to direct TPA funding to the areas of greatest need, the allocation of future TPA increases must be based upon actual need measured objectively and consistently. This will require additional effort to develop a data base of Tribal needs that is acceptable to the Tribes, the Congress, and the BIA.

3. How could we restructure our budget submissions to the Congress to more clearly present information on Self-Governance, Self-Determination, and direct service programs on a

Tribe-by-Tribe basis?

TPA Tribal Workgroup Response

The Tribal Workgroup representatives question whether a major re-structuring of the BIA budget is necessary and believe rather that the key issue is accountability for funds and ability to justify additional budget increases to meet Tribal unmet need (see question #4 below.) The Tribal Workgroup representatives recommend that Tribal governments must be consulted on any proposed BIA budget re-structure and that this re-structure would need to by fully reviewed by Tribes before implementation of any changes.

The Tribal Workgroup representatives do agree, however, that any budget submission should clearly present information on Self-Governance, Self-Determination, and direct service programs and that some improvements can be made in displaying this information. While this is an administrative responsibility, Tribes are concerned that a return to a BIA budget structure that requires detailed line item accounting would not adequately reflect Tribal flexibility in program re-design and re-allocation of funds.

Other Tribal Comments

The majority of Tribal comments did not support a restructure of the BIA's budget.

BIA Views

The BIA is not proposing to make any change in terms of the programs that can be contracted, the funds that can go into a Tribe's base, or Tribal authority to shift funds from one subactivity to another. Instead, the BIA seeks only a more helpful presentation of the budget to facilitate Congressional consideration of its budget requests.

The BIA developed two alternative structures as part of the development of the report. Both attempt to improve the structure to make the BIA's budget more compatible with the Government Performance and Results Act (GPRA). Both attempt to provide a clearer separation of what funding goes directly to Tribes and what funding is retained by the BIA to provide services.

The current budget justifications do not allow the Congress to easily determine the total amount of Operation of Indian Programs (OIP) funds which are proposed for major categories. For example, to determine the amount requested for Education, it is necessary to add amounts included within TPA, Other-Recurring Programs, and Special Programs and Pooled Overhead. Similarly, funds for the management of natural resources are included in each of the activities.

The following discussion is limited to the OIP Account. The goal of any restructuring should be to provide for easy identification of the total amount of funds which support services on Indian reservations; to separately identify those amounts for fulfilling the Federal trust responsibility; to better identify the cost of administering Indian Affairs; and to simplify the budget justifications while improving the quality of the information provided.

Option 1.

The Operation of Indian Programs (OIP) account would be reduced from six activities to three. These are described below.

1 ACTIVITY: TRIBAL COMMUNITY SUPPORT – The objective is to show all OIP resources that directly support activities typically carried out by local governments. It is designed to provide for better/easier comparison of tribal government spending to spending of other local governments. The budget formulation and execution procedures for the portions of the programs in this activity which are presently within the "base" TPA budgets would be unchanged. Further improvements in the usefulness of the information contained in the budget justifications could be made if the amounts currently included in Consolidated Tribal Government Programs and Self-Governance Compacts were identified by program, rather than by award mechanism.

Subactivity: Education
1. Elementary and Secondary Education
2. Higher Education
3. Continuing Education

Subactivity: Family Services (Public Welfare)
1. Welfare Assistance
2. ICWA
3. Administration of Family Services
4. Housing Improvement

Subactivity: Public Safety
1. Law Enforcement
2. Corrections
3. Fire Protection

Subactivity: Natural Resources
1. Agriculture and Range Management
2. Forestry
3. Fish and Game
4. Water Resources
5. Minerals and Mining
6. Integrated Resource Planning and Management

Subactivity: Community Development

1. Solid Waste Management
2. Road Maintenance
3. Economic Development
4. Direct Employment

Subactivity: Tribal Government Operations

1. Tribal Operations
2. Judicial and Legal Services
3. Contract Support

II ACTIVITY: FEDERAL TRUST RESPONSIBILITIES: Funding for these functions would not be subject to Tribal priority setting; funding would be determined based upon national standards. This would better enable the Department to have "certification" by the Special Trustee that the budget for trust operations is adequate. Functions could still be contracted, but Tribes would have to operate to Federal standards, and these programs could not be "redesigned."

Subactivity: Land Operations

4. Land Titles and Records
5. Appraisals and Leasing
6. Lease Monitoring and Compliance Enforcement
7. Cadastral Surveys
8. Environmental Quality
9. ANILCA/ANSCA

Subactivity: Trust Funds Billing and Collections

Subactivity: Probate Management

Subactivity: Water Rights Negotiation/Litigation

III ACTIVITY: GENERAL ADMINISTRATION: This activity includes the costs of managing and administering the BIA. This activity would not be subject to Tribal priority setting.

Subactivity: Management of Agency Operations – includes those amounts presently in TPA for General Administration.

Subactivity: Regional Operations – includes those amounts presently in the Area Office Operations activity.

Subactivity:	Headquarters Operations

Subactivity:	Pooled Overhead

Display of OIP

It is possible to identify in the budget justification those amounts that are subject to Tribal priority setting without having a separate activity for TPA. The following examples show three different options for budget justification displays. The examples are meant to be illustrative – not exhaustive.

Activity: Tribal Community Support
Subactivity: Education

Functional Categories	Program Element	FY 1998 Enacted
A. Elementary and Secondary Education		478,921
Formula Funding	School Operations	460,387
Tribal Priority Base	Johnson-O'Malley Educational Assistance	18,534
B. Higher Education		74,449
Formula Funding	Tribally Controlled Community College Grants	29,911
Tribal Priority Base	TCCC Supplements	1,024
	Scholarships	29,495
Project Grants	Special Higher Education Scholarships	1,337
Other	Post-Secondary Schools	12,682
C. Continuing Education		13,369
Tribal Priority Base	Adult Education	2,663
	Adult Vocational Training	9,202
	Other Education	1,504
Total, Education		566,739

Activity: Tribal Community Support
Subactivity: Natural Resources Management

Program Element	TPA Base	Formula Funding	Competitive Awards	Project Specific	Total
Agriculture and Range	19,682	11,772	1,959	298	33,711
Forestry	20,762	9,155		6,544	36,461
Water Resources	3,784		7,967		11,751
Fish and Game	4,998			28,410	33,408
Minerals and Mining	2,078		1,308	1,062	4,448
Total, Natural Resources	51,304	20,927	11,234	36,314	119,779

Activity: Tribal Community Support
Subactivity: Natural Resources Management

Program Element	TPA Base*			Formula Funding	Competitive Awards	Project Specific	Total
	Federal	Self-Det. Contracts	Self-Gov. Compacts				
Agriculture and Range	9,682	10,000	1,500	11,772	1,959	298	35,211
Forestry	8,762	12,000	10,000	9,155		6,544	46,461
Water Resources	0	3,784	500		7,967		12,251
Fish and Game	0	4,988	5,000			28,410	38,398
Minerals and Mining	1,078	1,000	250		1,308	1,062	4,698
Total, Natural Resources	19,522	31,772	17,250	20,927	11,234	36,314	137,019

* For this example, the split among three categories is simply illustrative.

Summary

It is possible to simplify and streamline the BIA's budget justification while providing a more comprehensive view of the total funding available for program activities. Changes to the budget justification would also more clearly display that portion of the budget which supports Tribal governments and their members. This would also allow refinements to the BIA's performance reports submitted under the *Government Performance and Results Act.*

Option 2.

Attention in the Congress of late has been on what Federal funds are provided to Tribes for their programs they choose to operate that were once provided by the Federal Government through the BIA's appropriations. While the current budget structure of the BIA is the result of a joint endeavor between the Tribes and the BIA, it is open to further refinement to allow for improved presentation as to which funds are eligible to Tribes versus BIA-operated programs. There have been misconceptions as to the level of funding provided to Tribes under the BIA's appropriations.

For instance, it has been a misconception that all programs funds under the budget category, TPA, are provided solely to Tribes. TPA, in fact, includes sole funding for Agency operations and limited funding to supplement Area Office operations. It is also not widely known that other programs in other BIA budget categories provide funding to Tribes to assist in Tribally-operated programs.

In response to Congressional concerns, as well as Tribal desire to see a clear presentation of which programs and funding levels are provided for Tribal programs versus BIA programs, a streamlining of the existing budget structure would present a clearer illustration of funds specifically for Tribal operations.

The following budget structure continues to build on presenting a clearer delineation of the BIA's budget as to what appropriations are provided to fund Tribal programs versus BIA programs.

Government Performance and Results Act

The BIA's Strategic Plan and Annual Performance Plans are geared towards the performance and accountability of programs under its direct operations. GPRA was not intended to measure productivity/performance of Tribal Governments. Separating funds that are solely provided for Tribal operations will present a clearer picture to those who seek to measure the BIA's performance in the execution of its duties as outlined in its Strategic Plan.

While many may feel Tribes should be subject to GPRA, it is difficult to set performance goals and measurements with the current statutes governing the BIA's oversight of Tribal programs under contract, compact, or grant unless Tribes agree and/or volunteer to do so. The core intent of these statutes is to allow more Tribal control and administration of programs operated by Tribes and, therefore, little oversight, regulation, and administration by the BIA on how the program is operated once it is transferred to the Tribe. It was the intent of the Congress that the Federal government limit its involvement in the administration of a program once assumed by the Tribe.

> The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian Tribes and to the Indian people as a whole through the establishment of meaningful Indian Self-Determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the *planning, conduct, and administration* [emphasis added] of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian Tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.

Streamlining of the BIA's budget will allow for improved measurement of the BIA's effectiveness in carrying out its mission relative to GPRA mandates, while recognizing the Congressional mandates on allowing for Tribal administration of Federal programs.

Task Force on BIA Reorganization

The budget restructure recommendation continues to build on the efforts began in the Joint Tribal/BIA/DOI Advisory Task Force on Reorganization of the Bureau of Indian Affairs (August, 1994) to fulfil the Self Determination policy through the Tribal Budget System (TBS). The Task Force Report sought "evolution of the TBS so that each Tribe's share of resources can be readily determined and tracked." This is the same track that the Congress appears to focus on to determine what resources the Federal government provides to Tribes for operation of its programs. In fact, this position was reiterated in the report language accompanying the FY 1998 appropriations, which directed the BIA to consider recommendations of the 1994 Task Force report.

The Advisory Task Force Report also recommends movement of additional programs to Tribal control within TPA to allow for Tribal control with an optimal goal of 95 percent of BIA appropriations being under Tribal administration. The Report states the following:

> "The Task Force envisions a system in which Tribes control 95% of the program resources appropriated to the BIA. This system would also ensure resources flow efficiently to the Agency or Tribal level where such resources may be used in a flexible manner to operate programs.
>
> When the Task Force began its work, Tribes had input into little more than 20% of the budget resources within the BIA's operating budget. The budget was formulated and formatted based on the BIA organization structure. Tribes were involved in priority setting only for a small portion of the budget commonly known as "Tribe/Agency" operations. ... More than half the Tribes had no separate account for their portion of the local budget, whereby, they could exercise control, make decisions, or set priorities."

The current budget structure for Operation of Indian Programs categories suggests that only 39 percent of BIA funds are used by Tribes. This does not take into account other BIA programs that also provide funds directly to Tribes for their programs. The recommended budget structure provided in this section would identify programs that are not only in Tribal bases (under the current TPA budget category), but also other BIA program funds provided to Tribes for their operations. This would increase the identification of Tribal programs from 39 percent to approximately 44 percent.

The Advisory Task Force Report also states that among its earliest accomplishments in implementing the TBS was the reformatting of the BIA budget. The TBS calls for maximum possible identification of funding with the Tribe, school, or location at which funds are to be expended. It also calls for providing a more stable Tribal base and the continued movement of more BIA programs to each Tribe's funding base. The Report took the position that "the first step to accomplish a larger and more stable base was to format the budget according to how it was distributed and *where it was spent* [emphasis added]. Since FY 1993, when the Congress approved the budget format recommended by the Task Force, the BIA has worked to indicate where funds are expended and to provide separate Tribal allocations as agreed upon by Tribes in multi-Tribal agencies. This recommendation builds on this progress.

RECOMMENDATIONS

Budget Categories:

Separate the existing budget categories under the Operation of Indian Programs into five budget activities:

Tribal Activities	Include programs that are provided to Tribes through existing TPA base funding and programs in which funds are distributed on a need-, competitive- and/or criteria-basis solely for the benefit of Tribes.
Education	Include programs and BIA operations which provide funding for Education programs (excluding programs identified as base funding under

	TPA).
Resources/Trust	Include programs that provide funding for natural resources and trust management.
Law Enforcement	Include all programs and BIA operations which provide funding for law enforcement pursuant to Congressional directive in the FY 1999 appropriations.
Bureau Operations	Include all programs which are solely for BIA administration and operation.

Programs

To clearly illustrate the level of funding provided to all Tribes, the description of Aid to Tribal Government, Consolidated Tribal Government Program (CTGP), and Self Governance Compacts should be detailed.

Each of these programs display a single lump sum amount that covers programs as varied as Agriculture to Education to Real Estate Services to Community Fire Protection. Yet, without having more detailed information, it cannot be readily ascertained by the reader exactly how the funds are allocated for programs by a Tribe.

This recommendation does not seek to eliminate or negatively affect these funding mechanisms. The purpose is to provide a clear presentation of the programs and funding levels for each Tribe. Funds included for any or all of these program line items that may be included in a *638* CTGP contract or self governance compact. Allowing for funds for these three programs to be allocated to the specific programs will allow for a clear presentation to any reader of the BIA's budget justification.

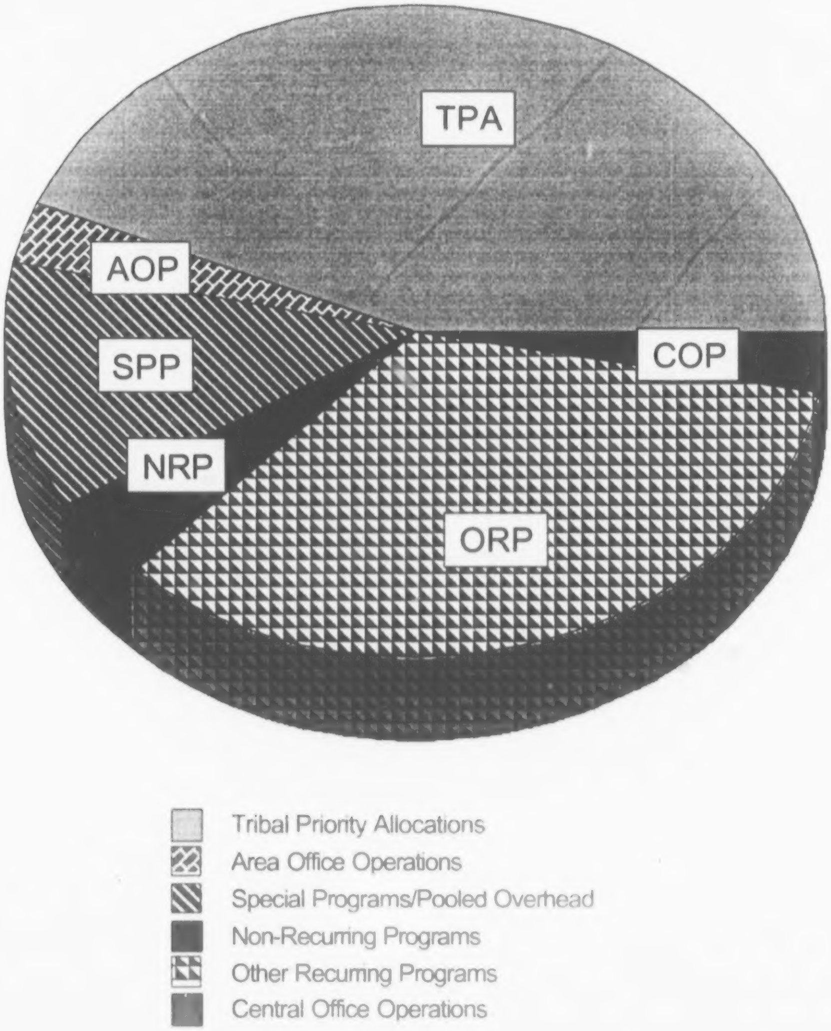
Non-Base Programs

Tribal bases would not include Welfare Assistance, Contract Support, Housing Improvement Program, or Road Maintenance.

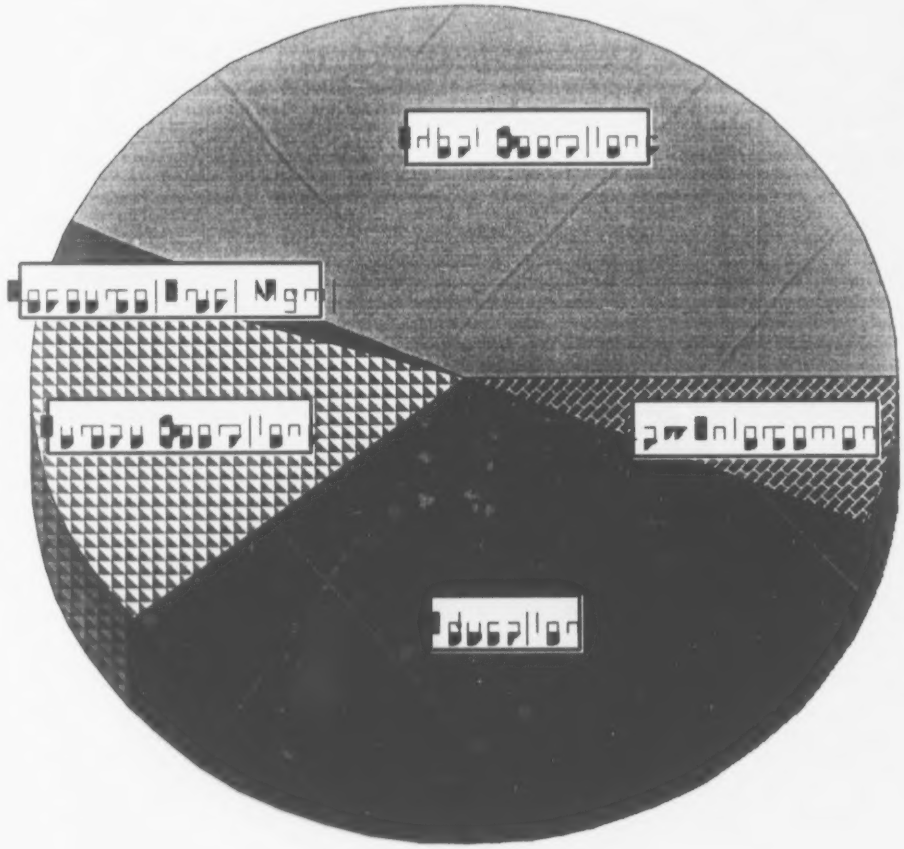
These programs are formula driven and should continue to be held separate from existing bases until consensus is reached with Tribes as to the formula or criteria to be used to make permanent distributions to base funding.

The following charts presents the split of the current budget categories (except for Construction and Guaranteed Loans) and the recommended budget restructure at the FY 1999 Enacted levels. While it is expected that further refinement of specific programs under the recommended restructure may be needed for full Tribal program presentation, the chart will present the reader with a bird's eye view of the improved budget presentation of programs providing funds directly to Tribes.

OPERATION OF INDIAN PROGRAMS
DISTRIBUTION BY BUDGET CATEGORY
FY 1999 ENACTED



OPERATION OF INDIAN PROGRAMS
RECOMMENDED BUDGET RESTRUCTURE
FY 1999 ENACTED



4. What information should the Tribes be asked to submit to support requests for appropriations, and what reporting should be required to determine the effectiveness of BIA and Tribal programs?

TPA Tribal Workgroup Response

The Tribal Workgroup recognizes the need for program measures baseline data to be submitted for budget justification and formulation, fund distribution, and reporting to the Congress. The collection of consistent data is also needed to meet the goals and objectives under the Government Performance and Results Act and can be used to justify increased funding to address Tribal unmet needs. Over the past two years, the BIA and Tribes have worked to develop minimum annual reporting requirements which allow for the compilation of consistent data elements. This information should be consistent with the BIA budget structure (see #3 above).

Tribes have provided reports and information to the BIA on a regular basis, although this information has never been consistently compiled and used by the BIA. It is essential that the BIA is provided the capacity and expertise to develop a national database and maintain current statistical information on an on-going basis. This initiative should remain a priority objective within the BIA.

Other Tribal Comments

Tribal comments were that they provide reports to the BIA that are not adequately used and there is no obligation to provide additional reporting. While some believed the idea of a national data base was worth considering, they had doubts about the BIA's ability to assemble and maintain such a data base.

BIA Views

The BIA believes that considerable additional information concerning Tribal accomplishments and Tribal needs would be useful in presenting, explaining, and defending budget requests. To address this problem, the BIA will work with the Tribes to develop standards for each program area which will form the basis of reporting provisions in each contract and annual funding agreement.

5. Should we do away with the "Aid to Tribal Government" and "Consolidated Tribal Government Programs" line items in favor of more specific line items that better describe the tribal activities funded by these line items?

TPA Tribal Workgroup Response

The Tribal Workgroup representatives oppose any deletion and/or changing of these programs. However, better accountability on the use these funds can be identified consistent with the objectives stated above in question #4.

Other Tribal Comments

Tribal responses were nearly unanimous in opposition to eliminating these line items. All of the responses viewed changes in these line item, as a reversal of the policy of Self-Determination and a reduction in Tribal flexibility in managing Federal program funds.

BIA Views

This question could have been more artfully asked and possibly not have elicited as negative a response. The issue that the BIA was attempting to discuss is not necessarily one of flexibility in program execution, but rather providing clarity of intentions in the program planning phase.

The BIA supports the flexibility provided to Tribes and believes that Tribes' use of the funds is generally consistent with congressional purposes in appropriating funds. However, the budget presentation to the Congress should contain a more explicit definition of the programs authorized in each program subelement. Specifically, CTGP and Self-Governance Tribes should be required to report their intended allocation of funds to the specific program sub-elements, and the BIA should report those allocations to the Congress. The BIA should also establish more clear consistent reporting requirements for the Tribes, and compile and pass this information to the Congress. While the Tribes' ability to move funds among programs without reprogramming should remain in place, the BIA should require Tribes to report such moving of funds to the BIA, and the BIA should report to the Congress on the same. While the Tribal leaders oppose any such action, the BIA believes it would be helpful to require such reporting.

Many of the Tribal leaders see the debate about means testing and accountability as an issue of who establishes priorities to an Indian Tribe. From the BIA's perspective, priority setting is clearly the domain of the Tribes under the policy of Self-Determination. The BIA does not want to establish priorities for Tribes. The BIA may have expertise to provide technical assistance to Tribes to assist the Tribes in establishing stronger governments and better programs for Tribal members, but the BIA is not in a position to set priorities; the Tribal leadership should do so.

The Congress, as the constitutional body charged with the appropriation of Federal funds has the authority to establish priorities and to direct the BIA to assure increased Tribal accountability in the expenditure of appropriated funds. The Congress has expressed concerns about whether Tribes are making the best use of Federal funds. Some of the concerns raised during the appropriations process relate to the BIA's inability to show the Congress exactly how Tribes are planning for and using the funds appropriated. The BIA's inability to demonstrate more clearly how Tribes use Federal funds arises from its implementation of Self-Determination policy, which intends that the Tribes decide how funds are used and not be required to obtain the approval of the BIA. While Congressional intent to keep the BIA out of the Tribes' business was to assure that the BIA did not meddle in Tribal decisions, it simultaneously inhibits the BIA from being able to provide the Congress with information about Tribal expenditures and accomplishments.

In order to increase Tribal flexibility in managing Federal program funds, the Congress created the ultimate in flexibility with the Self-Governance Act. Funds for Self-Governance Tribes are appropriated as a single program sub-element within TPA called "Self-Governance Compacts." Self-Governance Tribes then execute all their BIA-related programs with funds from this single line. There is no reprogramming required to shift funds between and among any authorized programs.

There are other program elements within TPA that have less flexibility than compacts, but still have far great flexibility in the use of BIA funds. The Consolidated Tribal Government Program (CTGP) program sub-element, like the Self-Governance Compact sub-element, allows a Tribe to gather their various programs into a single program sub-element and have greater flexibility in moving funds among programs without reprogramming. Tribes have programs ranging from Human Service and Education to Trust Responsibilities and Natural Resources all collected into the CTGP line of TPA.

Further, there are program sub-element lines that contain a broad range of authorized activities such as Aid to Tribal Governments. The presentation of the BIA budget makes it difficult to understand the purposes of the program; some Members of Congress might even believe that the Federal government should not be supporting these activities with Federal funds.

The Aid to Tribal Government program sub-element within TPA is described as follows in the BIA Budget Justification:

> The goal of this program is to foster strong and stable Tribal governments so they can effectively exercise their authority as sovereign nations. Existing contracting and compacting Tribes maintain membership information (rolls) for the purposes of providing Tribal services, according the rights and privileges of Tribal membership, and, where provided by Federal statute, certifying off-reservation treaty rights and eligibility for Federal services based upon American Indian status. Contracting and compacting Tribal entities perform the ministerial responsibilities of various Federal functions, including establishing voter lists, registering voters, printing ballots, and other requirements for secretarial elections. They also develop comprehensive policies, legislation and regulations to benefit Tribal membership, address Tribal needs, and comply with Federal law. For non-contracting or compacting Tribes, their services are provided by BIA Area and Agency Offices.
>
> In furtherance of the government-to-government relationship, Tribal Operations staff continue to assist Federally recognized Tribes with comprehensive planning and priority setting by coordinating with other Federal, State and local agencies to promote and strengthen Tribal governing systems. As required by Tribal and Federal law, staff also provide technical assistance, review, oversight and approval of claims settlements, judgment distributions, secretarial elections (adoption, revision or amendment of Tribal constitutions), Tribal governing enactments (codes, ordinances, and resolutions), attorney contracts, Section 81 contracts with Indians, Tribal operating budgets, administrative appeals, appeals under the Indian Judgment Act, Tribal revenue distribution, and assistance to other agencies, congressional offices, and the general public.
>
> Where established, staff administer courts of Indian offenses; request waivers of 25 CFR Part 11 when deemed appropriate; ensure an orderly transfer of records and functions when reassumed by Tribes; retain prosecutors and public defenders to aid the courts in the fair and orderly administration of justice and appoint magistrates when concurring Tribal resolutions are received.

The BIA has further confused this issue through attempts to reduce the number of budget lines and tying those lines to performance goals required under the Government Performance and Results Act (GPRA). This attempt to reduce lines has lead to program sub-elements that have an even greater breadth of activities and more flexibility, such as combining Aid to Tribal Government with CTGP.

6. What should our policy be for funding extremely small Tribes? Should the Congress require regional consortia in order to create economies of scale? Should the Congress encourage such consortia and how might it do so?

TPA Tribal Workgroup Response

The Joint DOI/BIA/Tribal 1994 report provided recommendations and guidance on funding for small Tribes. Over the past five years, the Administration has requested funding to implement these recommendations. The Tribal Workgroup representatives recommend that a minimum base for basic governmental functions be provided to Tribes. However, funding of these basic governmental functions should be separately identified from other service programs as outlined in the 1994 Joint DOI/BIA/Tribal 1994 report.

No, there should be no legislative or administrative requirement for consortium, although incentives for consortium can be considered. For example, under the BIA policy for Indian Child Welfare, Tribes which formed a consortium were provided financial incentives of increased funding for direct services.

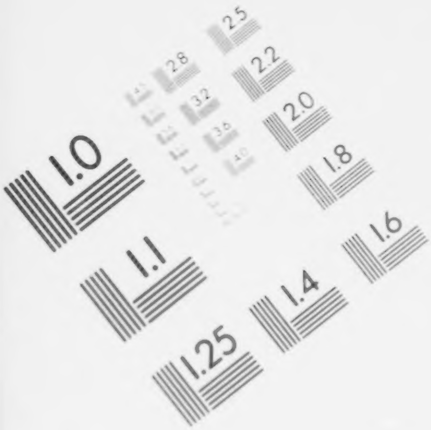
Other Tribal Comments

Tribal leaders from Alaska and California were adamantly opposed to any change in the small Tribes program funding. Nationally, some of the Tribal leaders understood the problem of very small Tribes where the membership is so small that the Tribe has difficulty establishing a government and financially managing program with adequate divisions of authority. Consortia were opposed if required, but supported if voluntary.

BIA Views

Funds will continue to be earmarked for the original Tribes in case their activities, as proposed in their statement of work, justifies increased resources up to the minimum base funding level of $160,000. Funds will not be used to pay BIA personnel costs at any level of the organization, with the exception of when an Agency provides the program service directly.

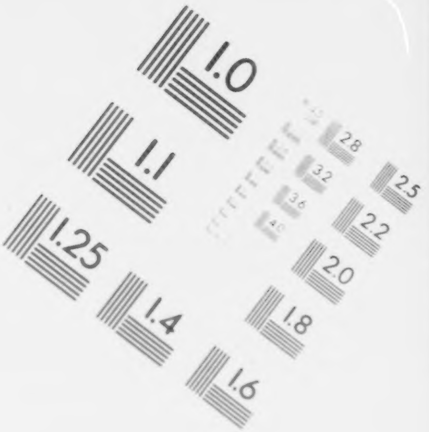
The Small Tribes Initiative was developed by the Joint Tribal/Bureau of Indian Affairs/Department of the Interior Task Force on BIA Reorganization (Task Force). The Initiative was established to address a funding allocation process that consistently failed to take into consideration the basic funding needs of small Tribes. These Tribes have small memberships and most have little or no land or other natural resources. The Initiative ensures that all Tribes, regardless of size and land or natural resources, will receive a recurring base funding amount of $160,000 for Tribes in the continental United States and $200,000 for Tribes in Alaska. The base funding amount is considered sufficient to enable small Tribes to put in place and maintain the management systems necessary to account for funds and ensure compliance with applicable laws and regulations. The funding also permits Tribes to establish and maintain administrative mechanisms sufficient



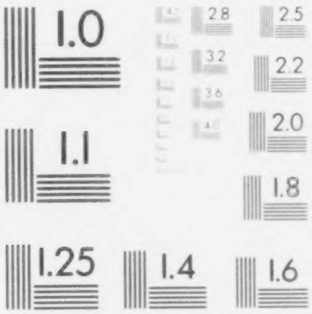
AIIM

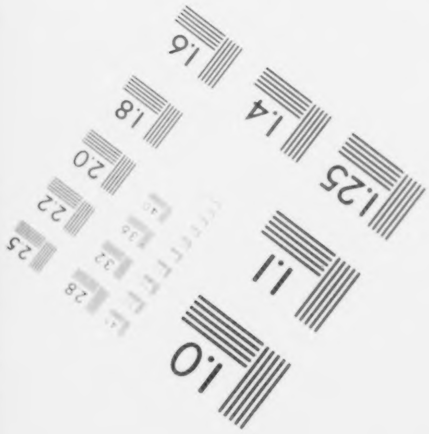
Association for Information and Image Management

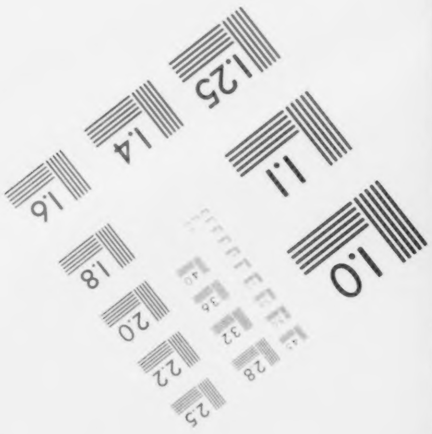
1100 Wayne Avenue, Suite 1100
Silver Spring, Maryland 20910
301/587-8202



Centimeter
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
mm
1
2
3
4
5
Inches


1.0
1.1
1.25
1.4
1.6
1.8
2.0
2.2
2.5
2.8
3.2
3.6
4.0





MANUFACTURED TO AIIM STANDARDS
BY APPLIED IMAGE, INC.

to establish viable Tribal office operations and service delivery systems.

To be eligible under this Initiative a Tribe must be a small Tribe, which is defined as a Tribe with a population of 1,500 or less Indian people living on or near their reservation. This definition does not differentiate among small Tribes based on size nor does it take into account Tribal revenue. All Tribes with populations from 1 to 1,500 are small Tribes according to this definition.

The Task Force report to the Congress resulted in an initial appropriations of $2,000,000 for the Initiative in FY 1995. This allowed increased funding for 100 small Tribes. There was no appropriation for the initiative in FY 1996, but a $4,000,000 appropriation in FY 1997 was shared by 160 of the 310 Tribes identified as small Tribes. In FY 1998, the Congress instructed the BIA to fund all small Tribes at $160,000. Small Tribes were awarded contracts in amounts up to $160,000, which became the base funding amount for those Tribes.

Although the Initiative was implemented according to Task Force design, serious concerns were raised when it was found that Tribes with populations of as few as 1, 2, or 3 members had been awarded $160,000 contracts and were scheduled to receive the same amount on a recurring basis. There are a number of other Tribes with little or no service population or program eligible Tribal members in their respective service areas.

The funding provided to small Tribes should enable these Tribes to develop the necessary infrastructure to function as a government and provide the services that tribal members expect from their government. The funding should also allow these Tribes to develop the capacity to enter into contracts and grants with any and all available funding sources as a means to develop and/or establish service delivery systems to meet the needs of their members.

During discussions on the small Tribes issue and possible small Tribes policy, the debate became rather contentious. The BIA will develop and consult on a clarification of small Tribes policy. The intention of the policy will be to assure that small Tribe funding is only provided to a Tribe that has demonstrated that it has the need and established the basic infrastructure with which to manage the funds, establish programs, and provide services to its people.

Changes to the Small and Needy Tribes Initiative may result in the withholding of funds from some of the Tribes with very small populations which have received funds in past fiscal years. When funds are withheld from a Tribe for any reason, funds will be retained within the respective Area Office to be distributed to the other small Tribes within the Area. If excess funds cannot be used for other small Tribes within the Area, the Area Office will inform the Central Office and funds will be withdrawn for redistribution to other Areas.

7. Should existing TPA allocations be revised to eliminate disparities among Tribes? Should we rely instead on targeting increases in future funding levels to eliminate these disparities? Is it realistic to rely on future increases?

TPA Tribal Workgroup Response

No, existing TPA should not be re-allocated. Consistent with question #2 above, TPA increases should be targeted to address disparities as well as provide for some adjustment for inflationary costs of existing programs. Finally, yes, it is realistic to rely on future increases due to the high level of unmet need in Indian Country.

Other Tribal Comments

The vast majority of Tribal leadership opposed any redistribution of current Tribal base funds. The predominate view is that all Tribes are under funded, and to take from one Tribe and give to another is only trying to equalize the poverty. Consequently, Tribal leaders oppose reallocating existing funds. However, the responses generally supported attempting to reduce or eliminate disparities in the distribution of future increases in funding.

BIA Views

The inconsistent provision of funds is a major problem when alternative sources of funding do not exist, and is a sufficiently large problem for many Tribes that BIA agrees with the Tribes that TPA base funding should not be reallocated.

Over the last several years during the appropriations process, the Congress has asked questions about the TPA distribution process for general increases and the effect of that process on Tribal TPA bases. The BIA has responded that TPA base allocations are historical in nature and were determined by a variety of factors, ranging from past funding for BIA agencies to earmarks provided by the Congress for a specific Tribe. Attempts to analyze Tribal distribution of TPA base funds by comparing the TPA funds per capita, or per acre, only seemed to raise additional questions. The Congress seemed to believe that Tribes should receive similar levels of funding per capita or per acre and asked the Government Accounting Office (GAO) to look into TPA allocations.

While GAO used a different time frame than prior analyses and considered more than simply TPA base funding per Tribe, GAO's analysis shows that there is considerable variation in per capita funding between Areas and Tribes. For example in their comparison between areas, GAO found the average TPA funding per capita Nationwide was $601; however, in Muskogee TPA per capita was $121 and in Portland TPA per capita was $1,020. This level of analysis, though, ignores that the Muskogee Area Tribes tend to have small land bases while Portland Area has both reservations and significant natural resources held in trust.

Further, refinement of the per capita and per acre analysis was conducted during the development of data for this report. The TPA Workgroup attempted to divide programs into those related to human services and those related to land, and then conduct per capita and per acre analyses. While the analysis provides a closer relationship between the purposes of funding and an indicator such as population serviced or acres of land, the analysis only proves that distributions can be made using simple measures like populations or land area.

One of the subgroups of the TPA Workgroup addressed the funding distribution and allocation issue. During its deliberations, it developed a spreadsheet model that took another step toward mathematical allocation of TPA funding. The subgroup's efforts were directed toward development of a model to show "how possible TPA funding increases could be allocated and supports maximum flexibility for Tribal decision-making in determining funding priorities." The model could also serve as a basis for reallocating existing funds based on per capita and per acre differences between Tribes.

The simple elegance of a single indicator of equitable Tribal treatment continues to come up as a reasonable means to distribute funds. The power of per capita and per acre calculations lies in the ease of making them, when we do not know with any certainty the actual measure of Tribal and individual Indian needs.

The Joint Task Force on the Reorganization of the BIA, the GAO, the current BIA/Tribal TPA Workgroup and nearly every other entity that has considered the distribution of funds issues has come to the same conclusion — that Indian funding should be allocated to individual Tribes based upon Tribal needs. Mathematical models for distribution of funds can easily be developed. However, as the model parameters change, Tribes will gain and lose funding as frequently as the models are run with additional or revised data. This creates a situation where Federal funding is made available inconsistently and cannot be relied on to satisfy either tribal or individual Indian needs.

8. Should the most prosperous Tribes be required to give up their TPA allocations? Under what circumstances? How should we redistribute any savings realized under such a policy? Are there any programs that must be funded for even the most prosperous Tribes?

TPA Tribal Workgroup Response

No, Tribes should not be required to give up their TPA allocations. Consistent with Federal treatment of other governmental entities, any standard or criteria used to define "prosperous" should not be considered for Tribal governments. However, Tribes who voluntarily return their TPA funding should have a say in how these funds are distributed. This decision should be made on an annual basis and accounting of these Tribes' TPA funding must be tracked by the BIA.

All Tribes must be funded to fulfill the United States Government's unique responsibilities to Indian Tribal governments which are grounded in the Constitution, and treaties developed by the Congress and the Federal common law over the course of more than 200 years.

Other Tribal Comments

Tribal leaders expressed both considerable concern about the definition of "prosperous" as well as resentment that the BIA would consider requiring a Tribe to give up their TPA allocations. They saw no circumstances where a Tribe should be required to give up its TPA base funding.

BIA Views

BIA agrees with the TPA Tribal Workgroup and the responding Tribal leaders that Tribes should not be required to give up their TPA allocation based on prosperity or some measure of self-sufficiency.

9. Instead of requiring the most prosperous Tribes to return their TPA allocations, should we encourage them to do so? What incentives might be offered to encourage the Tribes?

TPA Tribal Workgroup Response

Return of TPA allocations is an individual Tribal decision and such voluntary actions should be based upon individual Tribal and BIA negotiations. Legislative incentives and proposals (e.g. provisions for tax-exempt status, jurisdictional issues) could be considered by the Congress. Any specific incentives would be negotiated by a Tribe in exchange for return of TPA funding. The Federal government must ensure the preservation of the Tribe's base funding. Negotiations for the voluntary return and associated conditions for use of these funds would occur annually. Any TPA funds returned to the BIA would not diminish the Federal Government's trust responsibility to that Tribe, or the Government-to-Government relationship between the United States and that Tribe or that Tribe's ability to access future appropriations.

The re-allocation of TPA funding returned to the BIA would be on an annual basis based on negotiations with those Tribes. The Tribe's TPA base would remain eligible for any adjustment to TPA based on future increases. Finally, distribution of these funds to another Tribe would not be considered part of that recipient Tribe's on-going base.

Other Tribal Comments

Tribal leaders generally felt that if a Tribe had no unmet needs, it should voluntarily give back its TPA funding. However, the emphasis remained that it was up to the Tribe to decide its status. Some leaders went so far as to request that Tribes that could afford to give up TPA funds consider doing so, but under no conditions did Tribal leaders believe Tribes should be required to give up funding.

BIA Views

The BIA continues to support a voluntary program of Tribal return of TPA base funding. Several Tribes have agreed to return TPA funds and others have expressed interest in returning TPA funds. In general, Tribes have concerns that the Federal promises remain unchanged, but also the Tribes would like a say in how their returned funds are used. The BIA has encountered the problem that it lacks the authority to expend returned funds for the purposes wanted by Tribes. Particularly, Tribes have interest in supporting Tribal members in urban settings away from the reservation and the BIA lacks authority to expend funds for these purposes. To resolve the issues of uses for returned funds and concerns about coverage under the Federal Tort Claims Act, the BIA is entering into memoranda of understanding or agreement with Tribes returning TPA funds when appropriate.

10. If we are directed by the Congress to reallocate TPA on the basis of tribal needs and tribal revenues, what information should BIA be required to collect and how should BIA collect it? If BIA collects proprietary information, what measures should we take to protect its confidentiality?

TPA Tribal Workgroup Response

As stated above, the Tribal Workgroup representatives remain strongly opposed to any re-allocation of TPA including any provisions which would require Tribes to return their TPA funding. The BIA must take measures to ensure that proprietary information is protected within the framework of applicable Federal law, if possible and if not, through new legislation. The Tribes expect the Administration to oppose any proposed legislation that would infringe on the confidentiality of this information.

Other Tribal Comments

Tribal responses were varied. Most Tribes refused to address the question. Several stated that when the Federal Government lived up to its obligations and satisfied unmet needs, the Tribes would provide whatever information was needed. Generally, Tribes believed that for the BIA to collect proprietary information was a violation of the Government-to-Government relationship.

BIA Views

The BIA lacks the administrative capacity to establish an information collection system that is opposed by the Tribes and would require continual vigilance to assure that confidentiality and disclosure laws are not violated. Neither, we believe, is the Congress likely to provide funds to develop such administrative capacity.

Chapter Summary

✓ Tribal governments wish to exercise independent decisions on the composition of base budgets.
✓ Tribal Governments are far more concerned by the unequal status of Indian people as a group compared to the Nation as a whole than they are about any perceived or real inequities among Tribes.
✓ The BIA does not have the ability to accurately maintain, manage, and report performance data for all Tribes.
✓ There are conflicts between the laws passed by the Congress in providing Tribal flexibility in program administration and priority setting and the information requested by the Congress as to how Federal funds are being used by Tribes.
✓ Refinement of Small Tribes Initiative is required for extremely small Tribal populations.
✓ There is no support for reallocation of existing resources.
✓ Fewer than 10 percent of Indian Tribes have realistically achieved a revenue stream which would allow them to provide a full range of services to their citizens. Given relative small proportion of BIA funds that would be available from the TPA base of these Tribes to meet the overwhelming needs of other Tribes and the significant increased administrative workload which would require additional BIA staff, reallocation of base funds does not represent a cost effective solution to meet the needs in Indian Country.

CHAPTER 6
CONCLUSIONS

Respect Tribal Priorities
Target Future Increases

Tribes consider TPA funds to be the most important Federal funds they receive. TPA comprises nearly half of the BIA's operating budget and is the principal source of funding for most Tribal government operations. The Congress has authorized Tribes to prioritize funding among the various TPA programs according to their unique needs and circumstances. These various TPA programs are authorized by legislation aimed at carrying out the Federal government's responsibilities and obligations to Tribes and individual Indians.

Until quite recently, the BIA's service programs were not authorized by specific program statutes, but grew out of the general Federal/Tribal relationship, the needs of the Tribes, the inherent duties of the trust responsibility, and treaty and other obligations. The Congress still has not enacted specific authorizing legislation for most BIA programs; therefore the goals for Indian programs are quite general in nature, relying on the authority contained in the 1921 Snyder Act (Title 25 U.S.C. § 13).

A few programs have program specific statutory authorizations. In addition to subject specific programs, the BIA also operates or contracts or compacts with Tribes to operate certain general programs. Under a Consolidated Tribal Government Program (CTGP) Self-Determination contract or a Self-Governance compact, Tribes administer a number of programs under a single budget line. Contract Support and the Indian Self-Determination Funds defray Tribal administrative costs that support the delivery of program services.

While the lack of specificity in many authorizing statutes might otherwise be addressed through regulations or through specific performance criteria included in contract or grant awards, the substantive legislation governing awards to Indian Tribes removes this authority from the executive branch. The Indian Self-Determination and Education Assistance Act gives Tribes wide latitude in operating programs as they deem most appropriate and require that non-statutory standards be separately negotiated in each contract. Because there are no statutory standards for most of the TPA programs, the BIA has very limited ability to specify programmatic standards or obtain consistent data across programs from all Tribes. Tribes also have the ability to reallocate funds from one program to another after appropriations are enacted. The BIA supports this flexibility, although this practice limits the ability of the BIA to require that funds appropriated for a specific program be used by the Tribe to achieve specific program objectives.

In general, the distribution of TPA funds within each of the BIA's 12 Areas was sound; Tribes with larger populations and/or larger reservations receive proportionately larger shares of TPA funds, with only a few exceptions. Distributions among the 12 Areas, however, varied widely. Several reasons exist for these variations.

The allocation of BIA resources among the Areas and the Tribes is based on a complex set of historical, geographical, demographic, political and programmatic factors. Today, "base funding" identifies the basic contract amount or amount of services on which a Tribe can rely from one year to the next - the base amount from which budget increases or decreases are calculated. This base funding amount is the result of years of legislation, appropriations, and BIA administration.

A significant influence on the modern Tribal "base funding" has been the existence of a BIA Agency on a reservation. Agencies were usually located on the larger reservations or on reservations deemed to require close attention because of the historical importance of the Federal-Tribal relationship at a particular time.

When the Indian Self-Determination Act was implemented in the mid-1970's, Tribes served by a single agency found it easier to identify Federal funds for contracting than Tribes served by multi-Tribe agencies. It was perhaps inevitable that the negotiation of contract budgets in the cases of multi-Tribe agencies would yield uneven results, leading to considerable variety in the subsequent TPA base funding for the various Tribes. Throughout the implementation of both Self-Determination and Self-Governance, the BIA has lacked strict guidelines for negotiation of contract amounts, and the process tended to favor the contracting or compacting Tribes over those who chose not to contract. Over the years, the Congress has earmarked funds to deal with specific local issues at the request of individual Tribes or even state or local government officials. These funds have since become part of the particular Tribes' base funding.

At various times, especially in the past several decades, the Federal government has emphasized the development of certain natural resources and provided additional funding for those programs. Additional funds were provided only to Tribes owning such resources, and those funds were made part of the Tribe's recurring TPA base funding. On the other hand, several programs were removed from Tribal recurring bases during the 1980s. These programs included the Housing Improvement Program (HIP) and the Road Maintenance program; many Tribes had ranked these programs as top priorities and had allocated a substantial amount of their IPS (Indian Priority System, the forerunner of TPA) funding for them. When these funds were removed from the TPA, Tribes that had these programs listed as top priorities lost significant portions of their base funding.

At various times, the Federal government has emphasized human services or education programs. At those times, the BIA has requested additional funding for programs such as adult vocational training, housing improvement, or social services. Tribes with higher populations received a high proportion of these funds, which were then made part of their recurring TPA base to meet ongoing needs. However, increased Tribal enrollment, whether through changes in membership criteria or natural population growth, has not been considered in distributing additional funds for TPA programs. Migration to and from reservations, particularly as economic opportunities change, has not been accounted for in any calculations of TPA funding.

As a result of treaties, court decisions, Executive policy decisions, and Congressional acts, the legal obligations and funding for particular Tribes have resulted in unique recurring funding levels for those Tribes. Additionally, these funds were incorporated into various Tribes' bases to address the prospect of litigation from these Tribes against the Federal government for failure to support certain activities required by treaty, statute, or the Government's trust responsibility.

Timing has been important in establishing a funding base for "new" Tribes. Tribes that were newly recognized when there was funding available for that purpose tend to have more funds in their base than Tribes who were recognized when there was little or no "New Tribes" funding. At one point, a new Tribe received funding based on estimated Tribal enrollment and the Tribe's land base. Currently, new Tribes of less than 1,500 members receive $160,000. New Tribes of more than 1,500 members receive $320,000. Since 1994, there has been an effort to target additional resources to small Tribes. The Congress directed the BIA to fully fund the small Tribes at $160,000 per year in FY 1998. The 1994 DOI/BIA/Tribal Task Force Report on BIA Reorganization recommended that the minimum base funding for small Tribes in Alaska be at least $200,000 due to the high costs in Alaska. This recommendation is consistent with other Federal government cost formulas currently in use, which provide for a 25 percent incremental adjustment for high costs in Alaska.

Self-Governance Tribes are widely believed to receive more relative funding than other Tribes. This perception is largely due to the incentives and efforts to encourage Tribes to adopt Self-Governance during the pilot period. The Self-Governance Tribes have been allowed to roll all their funding into the single program sub-element within TPA called Self-Governance Compacts, and when general increases were provided by the Congress, the Self-Governance Tribes got larger shares of the increase because their bases were enhanced. Conversely, when TPA suffered a general decrease in FY 1996, Self-Governance Tribes were cut disproportionately due to their enhanced bases. While there may have been advantages to early entry into Self-Governance, there is no evidence that there are systematic and continuous financial advantages in favor of Self-Governance, except when general increases are provided by the Congress. When reviewing and comparing Tribal funding data between Self-Governance and other Tribes, it is important to recognize certain difference in budget structure. If a non-Self-Governance Tribe requests an increase in Services to Children, Elderly and Families for the next fiscal year, the BIA reflects that request specifically in its budget request. However a similar request for a Self-Governance Tribe is not displayed in the BIA budget request.

Many difficulties arise in any effort to develop an allocation system that takes into account the relative means of the Tribes. Determining the type, extent, and magnitude of Tribal revenues is the first difficulty. In an era when the BIA had a continuous presence on the reservation and managed an Indian Tribe's affairs, BIA personnel knew about all Tribal business activities. In the era of Self-Determination and Self-Governance, the BIA often does not know the extent of Tribal businesses. There is no assurance that financial statements and reports even exist for all Tribal business. Even if they exist, that there is no assurance the format and content of the statements and reports may be readily compared.

For Tribal gaming enterprises, there is less of an information gap because Tribes are required to provide annual financial statements to the National Indian Gaming Commission. Developing a coherent policy of how to use the information in allocating Federal funding is equally difficult. It is tempting to say that at some point a Tribe does not need Federal funding or a TPA base when the base is a fraction of one percent of the Tribe's revenue. However, using Tribal business revenue to offset TPA base funding is not a popular concept in Indian Country. The Tribes adamantly oppose means testing for programs other than those serving individuals. The BIA's review shows that Tribes having significant revenues are not receiving BIA funding intended for low income people, and if all of the non-trust related BIA funding to such Tribes were withheld, there would be no large sum of money to allocate elsewhere.

While Indian Tribes have been involved in business development for decades, only those Tribes on reservations with abundant natural resources had much income beyond that provided by the Federal government. More recently, Federal policy, as opposed to Federal programs, has significantly altered the economic condition of a number of Indian Tribes. Congressional endorsement of gaming on trust lands has brought hundreds of millions of dollars of non-Federal revenue to parts of Indian Country. The most significant source of non-trust revenue to Indian Tribes is gaming enterprises. The BIA reviewed all audit reports submitted to the National Indian Gaming Commission for fiscal years 1994 - 1996. For 1996, 166 Tribal gaming audits were available. These audits indicated that 28 Tribes realized a net loss from their gaming ventures. Profits of the remaining 138 Tribes covered a broad spectrum. On a per capita basis, the earnings ranged from less than $1.00 to more than $10,000.

Certainly, some Tribal governments whose gaming enterprises annually generate large revenues per capita could be deemed to be "self-sufficient." In these particular cases, TPA funds provided by the BIA are an unsubstantial percentage of their Tribal government budgets. Even for those Tribes though, there are certain Federal responsibilities that cannot readily, or even legally, be transferred to the Tribes without their consent. Furthermore, even prosperous Tribes may be able to demonstrate circumstances which would warrant a continuation of Federal support for programs or activities other than those identified above; a few years of prosperity do not overcome accumulated needs resulting from many decades of poverty.

In general, Tribes lack physical infrastructure (roads, housing, utilities, communications systems, etc.); face greater social problems resulting from limited educational and employment opportunities, and alcohol and drug abuse; and have suffered from having their affairs run by a paternalistic Federal government for 120 of the last 150 years. Moreover, based on FY 1996 data, there are 54 Tribes that generated gaming revenues in excess of $10,000 per member. OIP funding for these 54 Tribes for activities other than those identified above, is only about $10 million or $185,000 per Tribe. Thus, the "rich" Tribes take less than one percent of total TPA funds, and $10 million is an insubstantial amount in the face of the need that exists elsewhere in Indian Country.

Further, a profound disruption to the Federal-Tribal relationship would result from a redistribution. Quite literally, the money does not matter; it is the principle of Federal financial commitment to Tribal well-being that carries great weight. Finally, the Tribes point out correctly that no Federal funding provided to state and local governments is dependent on the relative means of those governments. This relatively small amount of money that might become available for redistribution is so insubstantial, that even as to those Tribes likely to benefit from a redistribution of these funds, there was unanimous opposition from Tribal leaders. Therefore, the BIA cannot recommend implementing a policy of means testing.

While the BIA and the Indian Health Service provide most of the Federal support to Indian Tribes, there are many other Federal programs available to Tribal governments. The BIA's review of the 1998 *Catalog of Federal Domestic Assistance* produced an 18-page list of programs that specifically identify Tribal governments as eligible applicants. While the BIA does not have information to indicate how Tribes fare when Federal grants are awarded on a competitive basis by other departments, it is supposed that a number of Tribes would be at a disadvantage, because they generally lack full-time, professional staff dedicated to writing strong grant proposals. Nonetheless, these programs are available and the BIA has seen increased outreach efforts by a number of Federal agencies, which leads us to believe that Tribal participation in these other programs will show steady increases.

The BIA worked with a Tribal leader workgroup and numerous Tribal consultants in the preparation of information for the TPA report. The workgroup and its subgroups met numerous times in meetings that were open to the public, and the Tribal leaders from each Area were encouraged to brief their Area counterparts. The BIA held meetings with the Tribal leaders from the Aberdeen, Albuquerque, Billings, Navajo, and Phoenix Areas. A Tribal Leader letter outlining the BIA report and asking a series of questions was sent to each Tribal Leader. From interaction at the meetings and written responses to the Tribal Leader letter, the BIA gained considerable insight about the opinions of Tribal leaders.

Tribal leaders that were part of the workgroup and those involved in both the face-to-face and written consultations drove home three basic principles concerning the BIA's TPA funding. They insist that existing TPA base funds should not be subject to any reallocation. They insist that BIA funding is inadequate for everyone and should not be moved around to make any Tribe worse off. They insist that there is no basis for means testing a Tribe. The BIA supports the Tribal leaders in these principles. However, the BIA also believes that the presentation of BIA and Tribal budgets can be improved and that equity in TPA distributions can be improved.

The TPA budget presentation can be improved in terms of clarity of what programmatic goals Tribes are budgeting to accomplish, and the TPA data base can be presented such that all Tribes report comparable accomplishment data. The BIA can provide greater details concerning what Tribes are budgeting for by displaying the details of Self-Governance compacts, the Consolidated Tribal Government Program line element, and further defining the element of Aid to Tribal Government. The BIA will not change the process of contract/compact award and budget execution, and the Tribes will retain all the flexibility they currently hold. However, displaying the details of the program element lines cited above will provide a familiar format showing comparable planning and budgeting for all Tribes. If Tribes further report on the expenditure of the Federal funds appropriated, the Congress can compare the appropriations with the expenditures.

Most Tribes support continuation of the proportionate sharing of the TPA general increases using Tribal base dollars to establish the proportionate share and believe that general increases for inflation (a variation on base proportionate increases) should be provided. Nearly all Tribes oppose any reallocation of current TPA base funding. The BIA concurs with Tribes that reallocation of TPA base funding should not be forced upon the Tribes. However, future increases should be allocated based on the needs of a Tribe for program dollars, not the existing TPA base funding of a Tribe. If future program increases are to be distributed based on relative Tribal needs, the BIA and the Congress must come to agreement on the appropriate indicators of needs and a Tribal needs data based developed.

The Tribes are split on the issue of base funding for small Tribes and the use of regional consortia. Most Tribal leaders continue to support the Reorganization Task Force proposal for small Tribes funding that says the BIA should provide each Tribe of less than 1,500 members with $160,000 per Tribe in the lower 48 states and $200,000 per Alaskan Tribe or village. While the BIA has not given Federal funding directly to very small Tribes, the mechanisms for handling their small Tribe funding have varied by Area and a uniform policy to deal with very small Tribes is required. On the issue of consortia, the BIA has used an incentive approach in the distribution of child welfare funds to encourage consolidation of program resources at a level above the single Tribe. If the Congress agrees that such an approach has merit, the BIA can encourage the consolidation of Federal Tribal program resources in places such as Alaska and California by using incentives.

On the issues of Tribal revenues, gaming, Tribal self-sufficiency, and TPA funding, no Tribal leader supported taking funds away from a Tribe because a Tribe had non-Federal sources of income. However, no Tribal leader objected to a Tribe voluntarily returning its funding for the benefit of more needy Tribes. From a review of single audit act reports, while many Tribes have Tribal businesses, most are not highly profitable and provide much needed employment to Tribal members on reservations.

The success of the gaming Tribes is very recent and it is unclear if these revenues can be relied on in the future. Consistent with the Indian Gaming Regulatory Act, they are investing in their reservations and Tribal infrastructure to make up for past neglect and to hopefully assure some better prospects for future generations. The BIA continues to support a voluntary approach of encouraging successful gaming Tribes to TPA base funds. If the Congress chooses to place additional requirements on funding to successful gaming Tribes, the BIA recommends that such an approach be sensitive to individual Tribal circumstances and allow a Tribe the opportunity to show why a reduction in funding would create hardship for Indians within its service area or otherwise prevent meeting an important Tribal need.

Chapter Summary

✓Base funding to Tribal Governments should not be redistributed.

✓The Federal Government does not apply means tests to State and Local Governments. These governments are eligible for Federal funds because of their status as governments; the same principle should apply to Tribal Governments.

✓Additional detail in the BIA budget presentations may improve understanding of Tribal program operations.

✓Incentives may prove a cost effective method to encourage development of shared service delivery among small Tribes.

✓If the Congress changes the current TPA policies and procedures, an appeal process must be established for those Tribal Governments affected by such a change.

APPENDIX 1

A Description of Major Federal Programs by Budget Category

1. Tribal Government

Self-Governance Compacts – provides funding to self-governance Tribes or compact activities in accord with the provisions of the ISDEAA.

Contract Support – provides statutorily mandated contract support funding to Tribes for the cost of administering contracts and compacts issued in accordance with the ISDEAA.

ISD Fund – provides funding for contract support costs and start up costs of new and expanded Tribal self-determination contracts and compacts.

Community Services, General – provides technical assistance and advice to agency superintendents and Tribes on all matters related to Tribal government and human services programs, including housing assistance, social services, and Tribal courts.

Other Aid to Tribal Government – supports Tribal government operations including maintenance of Tribal membership rolls, certification of eligibility for Federal services, establishment of voter lists and certification of voters, and development of comprehensive Tribal legislation and regulations. BIA staff also provide comprehensive planning, review, oversight, and approval of secretarial elections, and review of Tribal ordinances and resolutions.

Tribal Courts – provides BIA staff support for development, management, and administration of Indian justice systems, and provides salaries and related administrative costs for judges, prosecutors, defenders, clerks of the court, probation officers, juvenile officers, and other court support staff for more than 250 Tribal justice systems and Courts of Indian Offenses in accord with the Snyder Act and the Indian Tribal Justice Act.

2. Human Services

Services to Children, Elderly and Families – provides funds to support 1,000 or more BIA social and human services staff, who process assistance applications, provide counseling, and investigate abuse and neglect charges.

Welfare Assistance – provides basic human needs funding for Indians ineligible for state and local benefits, including general assistance for living expenses, child welfare assistance for abandoned and neglected children, care of disabled adults, funeral expenses, and emergency assistance for hardships caused by natural disasters.

Housing Improvement Program – provides services for needy Indian families who are ineligible for other housing programs to address homelessness and substandard housing.

Indian Child Welfare Act – provides funds for administrative costs and direct services to children and families in areas such as licensing and regulation of Indian foster care and adoptive homes; facilities for counseling and treatment for Indian families; temporary custody of Indian children; parenting programs; cultural, academic, social, and recreational programs for at-risk children; and Tribal court training.

3. Education

Schools – supports the operation or funding for 185 elementary and secondary schools; the provision of impact aid funds to public schools which serve Indian students who live on Indian trust land; the funding of 27 Tribally Controlled Community Colleges and two Tribal post-secondary vocational institutions; and funding eligibility for BIA system schools and Tribal colleges through various Federal aid-to-education programs.

Education Programs – TPA funds are provided for: (1) scholarship grants to eligible Indian students in post-secondary education, (2) opportunities for Indian adults to obtain a General Equivalency Diploma (GED), (3) earmarking of funds by Tribes to supplement the operation of Tribally Controlled Community College curriculum and program operations, and (4) Johnson-O'Malley Education Assistance programs to provide culturally-related and supplementary academic needs of Indian children attending public schools.

4. Public Safety and Justice

Law Enforcement – in order to maintain the fundamental responsibilities of the United States, the BIA provides law enforcement and community fire protection services within the subactivity of Public Safety and Justice. The law enforcement program's efforts are geared toward reducing crime in Indian country and improving the quality of law enforcement and detention services therein. Law enforcement funds, which support over 200 law enforcement programs covering 56 million acres of Indian Country and 1.4 million people, are used to employ BIA and Tribal police, including criminal investigators, uniformed officers, detention officers, and dispatchers, to investigate and enforce Federal and Tribal laws.

Fire Protection – provides program funds to over 40 Tribal fire protection programs, supports staffing and training of firefighters, repair of firefighting equipment, purchase of additional equipment, and provides smoke detectors, fire extinguishers, and emergency lighting for public buildings.

5. Community Development

Roads Maintenance – the road maintenance program supports the maintenance of 6,200 miles of paved roads and 17,800 miles of unpaved roads, providing access to Tribal lands, jobs, schools, health facilities, etc. It also provides for emergency snow/ice and landslide removal, inspection and maintenance of the BIA's 745 bridges, and inspection and maintenance of Federal Aviation Administration airstrips in Indian Country not serviced by other governments.

Job Training – the job placement and training program supports program participants with the preparation of resumes, aptitude skills testing, and vocational counseling. The program further provides basic skills training in areas such as computer technology, electronics, nursing, accounting, and building trades.

Economic Development – the economic development program supports BIA staff review of loan applications, approval/disapproval of loan guarantee requests, monitoring of loan compliance, reviewing financial documents requiring Secretarial approval, and reviewing and approving requests for mortgages on individual allotments.

6. Resources Management

Natural Resources, General – provides technical assistance from BIA staff in support of ISDEAA contracts involving conservation studies and inventories in the various natural resource disciplines, and provides assistance in the development of Tribal integrated resource management plans.

Agriculture – provides BIA technical assistance to and support of Tribal agricultural programs contracted under the ISDEAA, including inventory and research, farm and range planning, farmland improvements (such as farm drainage and irrigation), rangeland improvements, rangeland protection, and leasing and permitting services.

Forestry – provides support of forestry on 17 million acres of Indian forest lands encompassing 260 reservations in 26 states, including forest development (managed for sustained yield), timber sales management, forest inventory, forest protection (controlling levels of pests and insects and limiting trespass), and others.

Wildlife and Parks – supports more than 40 Tribes' management and enforcement programs for fisheries, wildlife, conservation, public use, etc.

Water Resources – supports Tribes under contracted programs to collect and analyze baseline data for managing and developing Indian water resources protected under Federal law, including litigation support and negotiation.

Mineral and Mining – supports Tribes and individual Indians in protection and preservation of mineral resources through proper management, including providing technical assistance to Tribes in oil, gas, and solid mineral leasing, assistance with Indian Mineral Development Act agreements negotiations, providing mineral lease and contract monitoring and enforcement, royalty management, and records maintenance.

7. Trust Services

Trust Services, General – supports the fulfillment of the BIA's trust responsibility to protect and preserve Tribal lands and resources through agency implementation of BIA policies, regulations, and guidelines, as well as the provision of technical assistance in trust land and resources management activities.

Rights Protection – provides BIA staff assistance in the research and development of information to assist the United States with future litigation and negotiations to resolve claims on Tribes' behalf for certain treaty and statutory rights, and providing assistance to Tribes in pursuing these claims.

Real Estate Services – provides staff support for real property management, counseling, and land use planning services to Indians and Tribes for 56 million acres of trust land, including trust land leasing activities, land acquisitions and sales, preparation and administration of probates, and land records execution and management.

Real Estate Appraisals – conducted to assure that Tribes and individual Indians receive fair market value from various real estate transactions, including acquisition, disposal, leasing, permits and easements, etc.

Environmental Quality Services – supports BIA staff in the collection of information, preparation of documents, and coordination with consultants regarding compliance with Federal environmental and cultural resource laws.

ANILCA Programs – upholds the directives of the Alaska National Interest Lands Conservation Act, which provides for coordination and consultation with land managing agencies and the State of Alaska on subsistence preference for Alaskan Natives and administration of Alaskan Native allotments.

ANSCA Historical and Cemetery Sites – fulfills the mandate of the Alaska Native Claims Settlement Act, through investigation and certification of Alaska Native historical places and cemetery sites, native groups, and native primary place of residence, to produce fair and legally valid certifications of Alaska Native land claims filed under the Act.

8. General Administration

General Administration funding supports the basic administrative responsibilities and activities of the BIA such as real and personal property management, purchasing, budgeting and financial planning, and other daily management and control duties regarding reports, records, equipment, and furniture. It also includes "executive direction" which encompasses agency superintendents and staff who provide decision-making, direction, overall management of resources, public relations and other basic responsibilities. In sum, General Administration is the administrative infrastructure ensuring that the BIA remains operational at the ground level and, thus, represents a vital element in the BIA's overall mission to satisfy the obligations of the United States to Tribes and Indians for which the Congress has made it responsible.

APPENDIX 2

1998 Catalog of Federal Domestic Assistance (CFDA) Programs Which Indicate that Federally Recognized Indian Tribal Governments May Apply

CFDA #	Name of Program	Type of Assistance
Department of Agriculture		
10.001	Agricultural Research-Basic Applied Research	Project Grants
10.028	Wildlife Services	Project Grants; Provision of Specialized Services; Advisory Services; Dissemination of Technical Information; Training
10.064	Forestry Incentives Program	Direct Payments for Specified Use
10.153	Market News	Dissemination of Technical Information
10.163	Market Protection and Promotion	Provision of Specialized Services; Advisory Services; Training
10.167	Transportation Services	Advisory Services; Training
10.220	Higher Education Multicultural Scholars program	Project Grants
10.250	Agricultural and Rural Economic Research	Dissemination of Technical Information
10.421	Indian Tribes and Tribal Corporation Loans	Direct Loans
10.438	Section 538 Rural Rental Housing Guaranteed Loans	Guaranteed/Insured Loans
10.441	Technical and Supervisory Assistance Grants	Project Grants
10.444	Direct Housing-Natural Disaster Loans and Grants	Project Grants; Direct Loans
10.445	Direct Housing-Natural Disaster	Direct Loans
10.453	Fund for Rural America-Farm Ownership Loans	Direct Loans
10.550	Food Distribution	Sale, Exchange, or Donation of Property and Goods
10.565	Commodity Supplemental Food Program	Formula Grants; Sale, Exchange, or Donation of Property and Goods
10.567	Food Distribution Program on Indian Reservations	Project Grants; Sale, Exchange, or Donation of Property and Goods
10.760	Water and Waste Disposal Systems for Rural Communities	Project Grants; Direct Loans; Guaranteed/Insured Loans
10.767	Intermediary Relending Program	Direct Loans
10.768	Business and Industry Loans	Direct Loans; Guaranteed/Insured Loans
10.769	Rural Development Grants	Project Grants

BEST COPY AVAILABLE

CFDA #	Name of Program	Type of Assistance
10.770	Water and Waste Disposal Loans and Grants (Section 306C)	Project Grants; Direct Loans
10.800	Livestock, Meat and Poultry Market Supervision	Project Grants
10.852	Rural Telephone Bank Loans	Direct Loans
10.854	Rural Economic Development Loans and Grants	Project Grants; Direct Loans
10.903	Soil Survey	Dissemination of Technical Information
10.907	Snow Survey and Water Supply Forecasting	Dissemination of Technical Information
10.912	Environmental Quality Incentives Program	Direct Payments for Specified Use
10.914	Wildlife Habitat Incentive Program	Direct Payments for Specified Use
10.950	Agricultural Statistics Reports	Dissemination of Technical Information
Department of Commerce		
11.001	Census Bureau Data Products	Dissemination of Technical Information
11.002	Census Customer Services	Advisory Services; Dissemination of Technical Information; Training
11.003	Census Geography	Provision of Specialized Services; Dissemination of Technical Information
11.005	Census Special Tabulations and Services	Provision of Specialized Services; Dissemination of Technical Information
11.025	Measures and Analyses of the U.S. Economy	Dissemination of Technical Information
11.026	National Trade Data Bank	Dissemination of Technical Information
11.027	Economic Bulletin Board	Dissemination of Technical Information
11.106	Remedies for Unfair Foreign Trade Practices-Antidumping and Countervailing Duty Investigations	Provision of Specialized Services; Investigation of Complaints
11.108	Commercial Service	Advisory Services
11.110	Trade Development	Advisory Services
11.150	Export Licensing Service and Information	Advisory Services
11.302	Economic Development-Support for Planning Organizations	Project Grants
11.303	Economic Development-Technical Assistance	Project Grants
11.307	Special Economic Development and Adjustment Assistance Program- sudden and Severe Economic Dislocation and Long-Term Economic Deterioration	Project Grants
11.405	Anadromous Fish Conservation Act Program	Project Grants

BEST COPY AVAILABLE

CFDA #	Name of Program	Type of Assistance
11.417	Sea Grant Support	Project Grants
11.427	Fisheries Development and Utilization Research and Development Grants and Cooperative Agreements Program	Project Grants
11.428	Intergovernmental Climate-Program	Project Grants
11.430	Undersea Research	Project Grants
11.431	Climate and Atmospheric Research	Project Grants
11.433	Marine Fisheries Initiative	Project Grants
11.452	Unallied Industry Projects	Project Grants
11.454	Unallied Management Projects	Project Grants
11.459	Climate and Air Quality Research	Project Grants
11.463	Habitat Conservation	Project Grants
11.468	Cooperative Institute for Applied Meteorological Studies (CIAMS) and Cooperative Institute for Tropical Meteorology (CITM)	Project Grants
11.469	Congressionally Identified Construction Projects	Project Grants
11.472	Unallied Science Program	Project Grants
11.550	Public Telecommunications Facilities-Planning and Construction	Project Grants
11.601	Calibration Program	Dissemination of Technical Information
11.603	National Standard Reference Data System	Project Grants; Dissemination of Technical Information
11.604	Standard Reference Materials	Dissemination of Technical Information
11.606	Weights and Measures Service	Provision of Specialized Services; Advisory Services; Dissemination of Technical Information
11.610	National Center for Standards and Certification Information	Dissemination of Technical Information
11.650	National Technical Information Service	Dissemination of Technical Information
11.800	Minority Business Development Centers	Project Grants
11.900	Patent and Trademark Technical Information Dissemination	Dissemination of Technical Information
Department of Defense		
12.104	Flood Plain Management Services	Advisory Services; Dissemination of Technical Information

CFDA #	Name of Program	Type of Assistance
12.111	Emergency Advance Measures for Flood Prevention	Provision of Specialized Services
12.551	National Security Education-Scholarships	Project Grants
12.552	National Security Education-Fellowship	Project Grants
12.607	Community Economic Adjustment Planning Assistance	Project Grants
12.611	Community Economic Adjustment Planning Assistance for Reductions in Defense Industry Employment	Project Grants
12.612	Community Base Reuse Plans	Project Grants
12.613	Growth Management Planning Assistance	Project Grants
12.900	Language Grant Program	Project Grants
12.901	Mathematical Sciences Grants Program	Project Grants
12.902	Information Security Grants Program	Project Grants
Department of Housing and Urban Development		
14.155	Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Project	Guaranteed/Insured Loans
14.159	Section 245 Graduated Payment Mortgage Program	Guaranteed/Insured Loans
14.162	Mortgage Insurance-Combination and Manufactured Home Lot Loans	Guaranteed/Insured Loans
14.171	Manufactured Home Construction and Safety Standards	Dissemination of Technical Information. Investigation of Complaints
14.172	Mortgage Insurance-Growing Equity Mortgages	Guaranteed/Insured Loans
14.191	Multifamily Housing Service Coordinators	Project Grants
14.227	Community Development Block Grants/Special Purpose Grants/ Technical Assistance Program	Project Grants; Direct Payments for Specified Use
14.238	Shelter Plus Care	Project Grants
14.239	HOME Investment Partnership Program	Formula Grants
14.243	Opportunities for Youth-Youthbuild Program	Project Grants
14.402	Non-Discrimination in Federally-Assisted Programs (On the Basis of Age)	Investigation of Complaints
14.404	Non-Discrimination in Federally Assisted and Conducted Programs (On the Basis of Disability)	Investigation of Complaints
14.405	Non-Discrimination in Federally Assisted Programs (On the Basis of Race, Color, or National Origin)	Investigation of Complaints

BEST COPY AVAILABLE

CFDA #	Name of Program	Type of Assistance
14.406	Non-Discrimination in the Community Development Block Grant Program (On the Basis of Race, Color, National Origin, Religion, or Sex)	Investigation of Complaints
14.407	Architectural Barriers Act Enforcement	Investigation of Complaints
14.412	Employment Opportunities for Lower Income Persons and Businesses	Investigation of Complaints
14.850	Public and Indian Housing	Direct Payments for Specified Use
14.853	Public Housing-Tenant Opportunities Program	Project Grants
14.857	Section 8 Rental Certificate Program	Direct Payments for Specified use
14.862	Indian Community Development Block Grant Program	Project Grants
Department of the Interior (other than the Bureau of Indian Affairs)		
15.222	Cooperative Inspection Agreements with States and Tribes	Project Grants
15.224	Cultural Resource Management	Project Grants; Sale, Exchange, or Donation of Property and Goods; Use of Property, Facilities, and Equipment; Provision of Specialized Services; Advisory Services; Dissemination of Technical Information; Training; Investigation of Complaints
15.225	Recreation Resource Management	Project Grants; Use of Property, Facilities, and Equipment; Provision of Specialized Services; Advisory Services; Dissemination of Technical Information; Training
15.252	Abandoned Mine Land Reclamation (AMLR) Program	Formula Grants; Project Grants
15.608	Fish and Wildlife Management Assistance	Provision of Specialized Services
15.620	African Elephant Conservation	Project Grants
15.809	National Spatial Data Infrastructure Competitive Cooperative Agreements Program	Project Grants
15.850	Indian Arts and Crafts Development	Use of Property, Facilities, and Equipment; Advisory Services; Investigation of Complaints
15.910	National Natural Landmarks Program	Provision of Specialized Services; Dissemination of Technical Information
15.912	National Historic Landmark	Advisory Services
15.916	Outdoor Recreation-Acquisition, Development and Planning	Project Grants
15.922	Native American Graves Protection and Repatriation Act	Project Grants

BEST COPY AVAILABLE

CFDA #	Name of Program	Type of Assistance
15.923	National Center for Preservation Technology and Training	Project Grants
15.926	American Battlefield Protection	Project Grants
15.976	Migratory Bird Banding and Data Analysis	Dissemination of Technical Information
Department of Justice		
16.005	Public Education on Drug Abuse-Information	Provision of Specialized Services; Dissemination of Technical Information; Training
16.101	Equal Employment Opportunity	Provision of Specialized Services
16.103	Fair Housing and Equal Credit Opportunity	Provision of Specialized Services
16.104	Protection of Voting Rights	Provision of Specialized Services
16.105	Civil Rights of Institutionalized Persons	Provision of Specialized Services
16.109	Civil Rights Prosecution	Investigation of Complaints
16.200	Community Relations Service	Provision of Specialized Services
16.541	Juvenile Justice and Delinquency Prevention-Special Emphasis	Project Grants; Provision of Specialized Services
16.542	National Institute for Juvenile Justice and Delinquency Prevention	Project Grants
16.543	Missing Children's Assistance	Project Grants
16.580	Edward Byrne Memorial State and Local Law Enforcement Assistance Discretionary Grants Program	Project Grants
16.583	Children's Justice Act Partnerships for Indian Communities	Project Grants; Direct Payments for Specified Use
16.587	Violence Against Women Discretionary Grants for Indian Tribal Governments	Project Grants
16.589	Rural Domestic Violence and Child Victimization Enforcement Grant Program	Project Grants
16.590	Grants to Encourage Arrest Policies	Project Grants
16.592	Local Law Enforcement Block Grants Program	Formula Grants
16.596	Correctional Grant Program for Indian Tribes	Project Grants
16.598	State Identification Systems Grant Program	Formula Grants
16.710	Public Safety Partnership and Community Policing Grants	Project Grants
16.711	Troops to COPS	Project Grants

CFDA #	Name of Program	Type of Assistance
Department of Labor		
17.003	Prices and Cost of Living Data	Dissemination of Technical Information
17.004	Productivity and Technology Data	Dissemination of Technical Information
17.005	Compensation and Working Conditions Data	Project Grants; Dissemination of Technical Information
17.006	Employment Projections Data	Dissemination of Technical Information
17.249	Employment Services and Job Training-Pilot and Demonstration Programs	Project Grants
17.601	Mine Health and Safety Counseling and Technical Assistance	Advisory Services; Dissemination of Technical Information
17.602	Mine Health and Safety Education and Training	Training
Department of Transportation		
20.106	Airport Improvement Program	Project Grants; Advisory Services
20.217	Motor Carrier Safety	Training; Investigation of Complaints
20.301	Railroad Safety	Investigation of Complaints
20.500	Federal Transit Capital Improvement Grants	Formula Grants; Project Grants
20.509	Public Transportation for Nonurbanized Areas	Formula Grants
20.512	Federal Transit Technical Assistance	Project Grants; Dissemination of Technical Information; Training
20.600	State and Community Highway Safety	Formula Grants
20.703	Interagency Hazardous Materials Public Sector Training and Planning Grants	Project Grants
20.812	Construction Reserve Fund	Direct Payments for Specified Use
20.900	Transportation-Consumer Affairs	Investigation of Complaints
20.903	Support Mechanisms for Disadvantaged Businesses	Project Grants
Department of the Treasury		
21.003	Taxpayer Service	Advisory Services; Training
Office of Personnel Management		
27.011	Intergovernmental Personnel Act (IPA) Mobility Program	Provision of Specialized Services; Advisory Services
Commission on Civil Rights		
29.001	Clearinghouse Services, Civil Rights Discrimination Complaints	Dissemination of Technical Information

BEST COPY AVAILABLE

CFDA #	Name of Program	Type of Assistance
Equal Employment Opportunity Commission		
30.009	Employment Discrimination Project Contracts-Indian Tribes	Direct Payments for Specified Use
Federal Communications Commission		
32.001	Communications Information and Assistance and Investigation of Complaints	Dissemination of Technical Information; Investigation of Complaints
Federal Maritime Commission		
33.001	Shipping Investigation of Complaints	Investigation of Complaints
Federal Trade Commission		
36.001	Fair Competition Counseling and Investigation of Complaints	Advisory Services; Investigation of Complaints
General Services Administration		
39.003	Donation of Federal Surplus Personal Property	Sale, Exchange, or Donation of Property and Goods
39.007	Sale of Federal Surplus Personal Property	Sale, Exchange, or Donation of Property and Goods
39.008	Federal Information Center	Dissemination of Technical Information
39.009	Consumer Information Center	Dissemination of Technical Information
Government Printing Office		
40.002	Government Publications Sales and Distribution	Sale, Exchange, or Donation of Property and Goods; Dissemination of Technical Information
Library of Congress		
42.002	Copyright Service	Dissemination of Technical Information
42.003	Distribution of Library of Congress Cataloging	Dissemination of Technical Information
42.005	Library of Congress Publications	Dissemination of Technical Information
42.006	Library of Congress - Library Services	Dissemination of Technical Information
42.007	Reference Services in Science and Technology	Dissemination of Technical Information
42.008	Semiconductor Chip Protection Service	Dissemination of Technical Information
National Foundation on the Arts and Humanities		
45.149	Promotion of the Humanities - Division of Preservation and Access	Project Grants
45.162	Promotion of the Humanities - Education Development and Demonstration	Project Grants
45.164	Promotion of the Humanities - Public Programs	Project Grants
45.311	Native American Library Services	Project Grants

CFDA #	Name of Program	Type of Assistance
President's Committee on Employment of People with Disabilities		
53.001	Employment Promotion of People with Disabilities	Advisory Services; Dissemination of Technical Information
Securities and Exchange Commission		
58.001	Securities - Investigation of Complaints and SEC Information	Dissemination of Technical Information; Investigation of Complaints
Small Business Administration		
59.007	Management and Technical Assistance for Socially and Economically Disadvantaged Businesses	Project Grants
Environmental Protection Agency		
66.009	Air Information Center	Dissemination of Technical Information
66.032	State Indoor Radon Grants	Project Grants
66.432	State Public Water System Supervision	Formula Grants
66.433	State Underground Water Source Protection	Formula Grants
66.460	Nonpoint Source Implementation Grants	Formula Grants
66.461	Wetlands Protection - Development Grants	Project Grants
66.467	Wastewater Operator Training Grant Program (Technical Assistance)	Project Grants
66.604	Environmental Justice Grants to Small Community Groups	Project Grants
66.605	Performance Partnership Grants	Formula Grants; Project Grants
66.606	Surveys, Studies, Investigations and Special Purpose Grants	Project Grants
66.607	Training and Fellowships for the Environmental Protection Agency	Project Grants; Training
66.651	Sustainable Development Challenge Grants	Project Grants
66.700	Consolidated Pesticide Enforcement Cooperative Agreements	Project Grants
66.707	TSCA Title IV State Lead Grants - Certification of Lead-Based Paint Professionals	Project Grants
66.708	Pollution Prevention Grants Program	Project Grants
66.713	State and Tribal Environmental Justice	Project Grants

CFDA #	Name of Program	Type of Assistance
66.802	Superfund State Site - Specific Cooperative Agreements	Project Grants
66.805	Leaking Underground Storage Tank Trust Fund Program	Project Grants
66.806	Superfund Technical Assistance Grants for Citizen Groups at Priority Sites	Project Grants
66.807	Superfund Innovative Technology Evaluation Program	Project Grants
66.808	Solid Waste Management Assistance	Project Grants
66.809	Superfund State Core Program Cooperative Agreements	Project Grants
66.810	CEPP Technical Assistance Grants Program	Project Grants
66.811	Brownfield Pilots Cooperative Agreements	Project Grants
66.926	Indian Environmental General Assistance Program	Project Grants
Commodity Futures Trading Commission		
78.004	Commodity Futures Reparations Claims	Investigation of Complaints
Department of Energy		
81.003	Granting of Patent Licenses	Dissemination of Technical Information
81.036	Energy-Related Inventions	Project Grants; Use of Property, Facilities and Equipment; Advisory Services; Dissemination of Technical Information
81.039	National Energy Information Center	Dissemination of Technical Information
81.042	Weatherization Assistance for Low-Income Persons	Formula Grants
81.064	Office of Scientific and Technical Information	Dissemination of Technical Information
81.065	Nuclear Waste Disposal Siting	Project Grants; Direct Payments for Specified Use
81.089	Fossil Energy Research and Development	Project Grants
81.104	Technology Development for Environmental Management	Project Grants
81.106	Transport of Transuranic Wastes to the Waste Isolation Pilot Plant: States and Tribal Concerns, Proposed Solutions	Project Grants
Federal Emergency Management Agency		
83.011	Hazardous Materials Training Program for Implementation of the Superfund Amendment and Reauthorization Act (SARA) of 1986	Project Grants

BEST COPY AVAILABLE

CFDA #	Name of Program	Type of Assistance
83.548	Hazard Mitigation Grant	Project Grants
Department of Education		
84.010	Title I Grants to Local Educational Agencies	Formula Grants
84.032	Federal Family Education Loans	Guaranteed/Insured Loans
84.060	Indian Education - Grants to Local Educational Agencies	Formula Grants, Project Grants
84.101	Vocational Education - Indians Set-Aside	Project Grants
84.170	Javits Fellowships	Project Grants
84.206	Javits Gifted and Talented Students Education Grant Program	Project Grants
84.245	Tribally Controlled Postsecondary Vocational Institutions	Project Grants
84.250	Rehabilitation Services - American Indians with Disabilities	Project Grants
84.258	Even Start - Indian Tribes and Tribal Organizations	Project Grants
84.269	Institute for International Public Policy	Project Grants
84.281	Eisenhower Professional Development State Grants	Formula Grants
84.318	Technology Literacy Challenge Fund Grants	Formula Grants
Architectural and Transportation Barriers Compliance Board		
88.001	Architectural and Transportation Barriers Compliance Board	Dissemination of Technical Information
National Archives and Records Administration		
89.001	National Archives Reference Services - Historical Research	Use of Property, Facilities and Equipment; Advisory Services; Dissemination of Technical Information
89.003	National Historical Publications and Records Grants	Project Grants
Department of Health and Human Services		
93.001	Civil Rights Compliance Activities	Dissemination of Technical Information, Investigation of Complaints
93.004	Cooperative Agreements to Improve the Health Status of Minority Populations	Project Grants
93.005	Project Grants for Facilities to Improve the Health Status of Minority Populations	Project Grants
93.047	Special Programs for the Aging - Title VI, Part A, Indian Programs - Grants to Indian Tribes and Part B, Grants to Native Hawaiians	Project Grants

CFDA #	Name of Program	Type of Assistance
93.105	Bilingual/Bicultural Service Demonstration Projects in Minority Health	Project Grants
93.111	Adolescent Family Life Research Grants	Project Grants
93.151	Health Center Grants for Homeless Populations	Project Grants
93.158	Adolescent Health Centers for American Indians/Alaska Natives	Project Grants
93.180	Research on Health Care Outcomes and Quality	Project Grants
93.184	Disabilities Prevention	Project Grants
93.187	Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds	Project Grants
93.197	Childhood Lead Poisoning Prevention Projects - State and Community-Based Childhood Lead Poisoning Prevention and Surveillance of Blood Lead Levels in Children	Project Grants
93.204	Surveillance of Hazardous Substance Emergency Events	Project Grants
93.206	Human Health Studies - Applied Research and Development	Project Grants
93.208	Great Lakes Human Health Effects Research	Project Grants
93.219	Matching Grants for Health Professions Scholarships to Indian Tribes	Project Grants
93.228	Indian Health Service - Health Management Development Program	Project Grants
93.231	Epidemiology Cooperative Agreements	Project Grants
93.236	Grants for Dental Public Health	Project Grants
93.237	Special Diabetes Program for Indians - Prevention and Treatment Projects	Project Grants
93.238	Cooperative Agreements for State Treatment Outcomes and Performance Pilot Studies Enhancement	Project Grants
93.242	Mental Health Research Grants	Project Grants
93.289	President's Council on Physical Fitness and Sports	Provision of Specialized Services; Advisory Services; Dissemination of Technical Information
93.358	Professional Nurse Traineeships	Project Grants
93.375	Minority Biomedical Research Support	Project Grants
93.550	Transitional Living for Homeless Youth	Project Grants

CFDA #	Name of Program	Type of Assistance
93.551	Abandoned Infants	Project Grants
93.559	Federal Loans for State Welfare Programs	Direct Loans
93.568	Low-Income Home Energy Assistance	Formula Grants; Project Grants
93.569	Community Services Block Grant	Formula Grants
93.575	Child Care and Development Block Grant	Formula Grants
93.581	Improving the Capability of Indian Tribal Governments to Regulate Environmental Quality	Project Grants
93.582	Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense Activities	Project Grants
93.587	Promote the Survival and Continuing Vitality of Native American Languages	Project Grants
93.592	Family Violence Prevention and Services/Grants for Battered Women's Shelters - Discretionary Grants	Project Grants
93.594	Tribal Work Grants	Formula Grants
93.596	Child Care Mandatory and Matching Funds of the Child Care and Development Fund	Formula Grants
93.612	Native American Programs	Project Grants; Direct Loans
93.613	Mental Retardation - President's Committee on Mental Retardation	Dissemination of Technical Information
93.647	Social Services Research and Demonstration	Project Grants
93.671	Family Violence Prevention and Services/Grants for Battered Women's Shelters - Grants to States and Indian Tribes	Formula Grants
93.905	Indian Health Service Research	Project Grants
93.910	Family and Community Violence Prevention Program	Project Grants
93.933	Research and Demonstration Projects for Indian Health	Project Grants
93.954	Tribal Recruitment and Retention of Health Professionals into Indian Health Programs	Project Grants
93.959	Block Grants for Prevention and Treatment of Substance Abuse	Formula Grants
93.970	Health Professions Recruitment Program for Indians	Project Grants
93.991	Preventive Health and Health Services Block Grant	Project Grants

1998 Catalog of Federal Domestic Assistance (CFDA) Programs
State/Local Government Eligibility Appears to Exclude Indian Tribes (a)

CFDA #	Name of Program	Type of Assistance	Eligible to Apply for Assistance	
			Local Govts (b)	State Govts
Department of the Interior				
15.214	Non-Sale Disposals of Mineral Material (Free Use of Mineral material for Public Projects)	Sale, Exchange, or Donation of Property and Goods		X
15.504	Reclamation and Water Reuse Program	Formula Grants	X	X
15.602	Conservation Law Enforcement Training Assistance	Training		X
15.614	Coastal Wetlands Planning, Protection and Restoration Act	Project Grants		X
15.615	Cooperative Endangered Species Conservation Fund	Project Grants		X
15.616	Clean Vessel Act	Project Grants		X
15.617	Wildlife Conservation and Appreciation	Project Grants		X
15.807	Earthquake Hazards Reduction Program	Project Grants	X	X
15.808	U.S. Geological Survey-Research and Data Acquisition	Project Grants	X	X
15.915	Technical Preservation Services	Provision of Specialized Services; Advisory Services; Dissemination of Technical Information	X	X
15.918	Disposal of Federal Surplus Real Property for Parks, Recreation, and Historic Monuments	Use of Property, Facilities, and Equipment	X	X
15.921	Rivers, Trails and Conservation Assistance	Advisory Services	X	X
15.925	National Maritime Heritage Grants	Project Grants	X	X
15.978	Upper Mississippi River System Long Term Resource Monitoring Program	Project Grants	X	X
Department of Agriculture				

CFDA #	Name of Program	Type of Assistance	Eligible to Apply for Assistance	
			Local Govts (b)	State Govts
10.025	Plant and Animal Disease, Pest Control, and Animal Care	Project Grants; Provision of Specialized Services; Advisory Services; Dissemination of Technical Information, Training	X	X
10.072	Wetlands Reserve Program	Direct Payments for Specified Use	X	X
10.156	Federal-State Marketing Improvement Program	Project Grants		X
10.202	Cooperative Forestry Research	Formula Grants		X
10.215	Sustainable Agriculture Research and Education	Project Grants		X
10.217	Higher Education Challenge Grants	Project Grants		X
10.415	Rural Rental Housing Loans	Direct Loans	X	X
10.420	Rural Self-Help Housing Technical Assistance	Project Grants	X	X
10.442	Housing Application Packaging Grants	Project Grants	X	X
10.451	Noninsured Crop Disaster Assistance	Direct Payments with Unrestricted Use		X
10.452	Disaster Reserve Assistance	Direct Payments for Specified Use		X
10.558	Child and Adult Care Food Program	Formula Grants		X
10.573	Homeless Children Nutrition Program	Formula Grants	X	X
10.574	Team Nutrition Grants	Project Grants		X
10.652	Forestry Research	Project Grants	X	X
10.670	National Forest - Dependent Rural Communities	Project Grants; Use of Property, Facilities, and Equipment; Training	X	
10.700	National Agricultural Library	Project Grants; Dissemination of Technical Information	X	X
10.772	Empowerment Zones Program	Project Grants	X	X
10.850	Rural Electrification Loans and Loan Guarantees	Direct Loans	X	
10.855	Distance Learning and Telemedicine Loans and Grants	Project Grants; Direct Loans	X	X

BEST COPY AVAILABLE

CFDA #	Name of Program	Type of Assistance	Eligible to Apply for Assistance	
			Local Govts (b)	State Govts
10.902	Soil and Water Conservation	Advisory Services	X	X
10.910	Rural Abandoned Mine Program	Direct Payments for Specified Use; Advisory Services	X	
Department of Commerce				
11.004	Census Intergovernmental Services	Advisory Services; Dissemination of Technical Information; Training	X	X
11.413	Fishery Products Inspection and Certification	Provision of Specialized Services	X	X
11.426	Financial Assistance for Ocean Resources conservation and Assessment Program	Project Grants	X	X
11.429	Marine Sanctuary Program	Project Grants		X
11.473	Coastal Services Center	Project Grants	X	X
11.609	Measurement and Engineering Research and Standards	Project Grants	X	X
Department of Defense				
12.100	Aquatic Plant Control	Provision of Specialized Services; Dissemination of Technical Information	X	X
12.103	Emergency Operations Flood Response and Post Flood Response	Provision of Specialized Services	X	X
Department of Justice				
16.001	Law Enforcement Assistance-Narcotics and Dangerous Drugs-Laboratory Analysis	Provision of Specialized Services; Advisory Services; Dissemination of Technical Information	X	X
16.004	Law Enforcement Assistance-Narcotics and Dangerous Drugs Training	Training	X	X
16.108	Americans with Disabilities Act Technical Assistance Program	Project Grants; Advisory Services; Dissemination of Technical Information; Training; Investigation of Complaints	X	X

CFDA #	Name of Program	Type of Assistance	Eligible to Apply for Assistance	
			Local Govts (b)	State Govts
16.601	Corrections-Training and Staff Development	Project Grants; Provision of Specialized Services; Dissemination of Technical Information; Training	X	X
16.602	Corrections-Research and Evaluation and Policy Formulation	Project Grants; Provision of Specialized Services; Dissemination of Technical Information	X	X
16.603	Corrections-Technical Assistance/Clearinghouse	Project Grants; Provision of Specialized Services; Dissemination of Technical Information	X	X
16.728	Drug Prevention Program	Project Grants		X
Department of the Treasury				
21.052	Alcohol, Tobacco, and Firearms-Training Assistance	Training	X	X
National Foundation on the Arts and the Humanities				
45.024	Promotion of the Arts-Grants to Organizations and Individuals	Project Grants	X	X
45.201	Arts and Artifacts Indemnity	Insurance	X	X
Federal Emergency Management Agency				
83.100	Flood Insurance	Insurance	X	X
83.536	Flood Mitigation Assistance	Formula Grants; Project Grants	X	X
83.537	Community Disaster Loans	Direct Loans	X	
Department of Health and Human Services				
93.003	Public Health and Social Services Emergency Fund	Project Grants	X	X
93.118	Acquired Immunodeficiency Syndrome (AIDS) Activity	Project Grants	X	X
93.127	Emergency Medical Services for Children	Project Grants	X	X
93.136	Injury Prevention and Control Research and State and Community Based Programs	Project Grants	X	X
93.155	Rural Health Research Centers	Project Grants	X	X
93.174	Knowledge Dissemination Grants (Substance Abuse)	Project Grants	X	X

CFDA #	Name of Program	Type of Assistance	Eligible to Apply for Assistance	
			Local Govts (b)	State Govts
93.178	Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds	Project Grants	X	X
93.217	Family Planning-Services	Project Grants	X	X
93.224	Community Health Centers	Project Grants	X	X
93.235	Abstinence Education	Formula Grants		X
93.244	Mental health Clinical and AIDS Service-Related Training Grants	Project Grants	X	X
93.260	Family Planning-Personnel Training	Project Grants	X	X
93.268	Immunization Grants	Project Grants	X	X
93.571	Community Services Block Grant Discretionary Awards-Community Food and Nutrition	Formula Grants; Direct Payments for Specified Use	X	X
93.595	Welfare Reform Research, Evaluation and National Studies	Project Grants	X	X
93.670	Child Abuse and Neglect Discretionary Activities	Project Grants	X	X
93.901	Communications Programs for Demonstrating and Prevention of Alcohol, and Drug Problems	Project Grants	X	X
93.995	Adolescent Family Life-Demonstration Projects	Project Grants	X	X
	Corporation for National and Community Service			
94.002	Retired and Senior Volunteer Program	Project Grants	X	X
94.004	Lean and Serve America-School and Community Based Programs	Project Grants	X	X
94.005	Learn and Serve America-Higher Education	Project Grants		X
94.006	Americorps	Project Grants	X	X
94.007	Planning and Program Development Grants	Project Grants	X	X
94.009	Training and Technical Assistance	Project Grants	X	X
94.011	Foster Grandparent Program	Project Grants	X	X

BEST COPY AVAILABLE

CFDA #	Name of Program	Type of Assistance	Eligible to Apply for Assistance	
			Local Govts (b)	State Govts
94.013	Volunteers in Service to America	Provision of Specialized Services	X	X
94.016	Senior Companion Program	Project Grants	X	X

(a) Federally-recognized Indian Tribal Governments include the governing body or a governmental agency of any Indian Tribe, band, nation, or other organized group or community (including any Native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the BIA.

(b) Local Governments are defined as county, parish, municipality, city, town, township, village, State-designated Indian Tribal governments, local public authority, school districts, special districts, intrastate district, council of governments, sponsor group representative organizations, and other regional or interstate government entity, or any agency or instrumentality of a local government.

APPENDIX 3

Tribal Priority Allocations (TPA) Standards

TRIBAL GOVERNMENT:

Tribal Government						
Other Aid to Tribal Government $22,209,000	Palau- Population 18,000	Voter Registration/ Council Legislature Counsel to Advise Counsel	$17.53 per person - Total Aid to Tribal Government Budget is $29,000,000. Total population 1,654,292 [1997 Indian Service Population and Labor Force Report]	$1,735,200 (Palua Government Funding) - 18,000 (population) = $96.47 per person	$78.94 x 1,260,206 Total Population	$130,589,810
New Tribes[71]						
Indian Self-Determination Fund[72]	See Non-Base TPA Funding Table					
Contract Support Funds						
Small Tribes[73]						

Community Services General: Program responsibilities are included under Aid to Tribal Government.

Program
Aid to Tribal Government

The goal of this program is to promote Indian Self-Determination by supporting Tribal government operations. All Tribes have the need to maintain membership information (rolls) for the purposes of providing Tribal services, according the rights and privileges of Tribal membership, and, where provided

---

[71] This program is to support newly acknowledged Tribes. Once a new Tribal government is in place, funds are redistributed to operating programs, based on the priorities of the Tribal leadership.

[72] Funds are used to meet Tribes contract support requirements when contracting or compacting new programs, under the authority of the Indian Self-Determination Act, as amended. Funds are distributed to the contractor in the first year of a new or expanded contract, on a first-come first-served basis. Contract Support for the second year and beyond comes from the Contract Support line item, also included within TPA. See table titled "Tribal Priority Allocations (TPA) - Non-Base Funding."

[73] This program is a result of a recommendation made by the Joint Tribal/BIA/DOI Task Force on Bureau of Indian Affairs reorganization. Minimum funding levels were recommended for the small Tribes that had small populations and few Federal resources. After initial distribution of funds, Tribes redistribute funds to operating TPA program(s) based on the priorities of the Tribal leadership.

BEST COPY AVAILABLE

by Federal statute, certifying off-reservation treaty rights and eligibility for Federal services based upon American Indian status. Contracting and compacting Tribal entities perform the ministerial responsibilities of various Federal functions, including establishing voter lists, registering voters, printing ballots, and other requirements for secretarial elections. They also develop comprehensive policies, legislation and regulations to benefit Tribal membership, address Tribal needs, and comply with Federal law. As required by Tribal and Federal law, BIA Tribal operations staff also provide expert technical assistance, review, oversight and approval of claims settlements, judgement distributions, adoption, revision or amendment of Tribal constitutions, Tribal governing enactments, attorney contracts, Section 81 contracts with Indians, Tribal operating budgets, administrative appeals, appeals under the Indian Judgment Act, Tribal revenue distribution, and assistance to other agencies, congressional offices, and the general public.

Standard/Problem

The above functions and services are provided to Tribal governments under Other Aid to Tribal Government to fully support Tribal Self-Determination and the Government-to-Government relationship. They are based on mandates from Federal treaties, court decisions, executive orders, and legislation. Many are very unique services and most are not readily comparable to another Federal or state agency. Due to the wide variety of governmental functions that tribes perform under Other Aid to Tribal Government funding, based on local need, the sub-group narrowed the activities for this comparison to voter registration, council legislature, and legal counsel services to council. Our review revealed that it was virtually impossible to easily isolate similar functions and costs at the local, state or Federal level. *After many attempts to find a larger sample of comparable programs, the U.S. possession Palau, was selected as an entity that most closely approximated the functions performed by Tribal governments.* The Secretary of the Interior has certain authority and responsibilities with regard to the Republic of Palau. The Secretary has delegated authority and responsibilities to the Office of Insular Affairs, under the general supervision of the Assistant Secretary-Policy, Management and Budget.

Palau is located within a group of islands in the North Pacific Ocean, southeast of the Philippines. The area is slightly more than 2.5 times the size of Washington, D.C. The islands share similar general environmental concerns with several Tribes in terms of waste disposal, threats to ecosystems, illegal fishing practices, and over-fishing. The Republic of Palau is somewhat analogous to tribes in the type of constitutional government or organizational structure. It is an island nation with defined boundaries not unlike most Tribal reservations. Their legal system is based on Trust Territory laws, actions of the legislature, municipal, common, and customary laws. The Palau economy consists primarily of subsistence agriculture and fishing. The government is the major employer of the work force, relying heavily on financial assistance from the U.S.

Contract Support Funds: These funds are not included in Tribal recurring base funds and are not subject to the priority setting process.

HUMAN SERVICES

Human Services						
Services to Children, Elderly and Families $42,298,000	State Temporary Assistance to Needy Families (TANF)	Caseload per staff GA for service only cases requiring substantial casework or client counseling at least once per month	**30:1** 118 BIA caseworkers x $30,000 avg salary/benefits = $3,540,000 (Based on 3,540 case)	**15:1** 236 wkrs x $30,000 = $7,080,000 (Based on 3,540 case)	118 wkrs x $30,000 =	$3,540,000
		GA or service only, etc. moderate casework every two months	**50:1** 160 wkrs x $30K = $4,800,000 (based on a caseload of 8,000)	**25:1** 320 wkrs x $30K= $9,600,000 (based on a caseload of 8,000)	160 wkrs x $30K	$4,800,000
		GA, etc. minimum casework every six months	**100:1** 160 wkrs x $30K = $4,800,000 (based on a caseload of 8,000)	**50:1** 320 wkrs x $30K= $9,600,000 (based on a caseload of 8,000)	160 wkrs x $30K	$4,800,000
Indian Child Welfare Act $14,235,000	Child Welfare League of America	Caseload per staff Under age 5 no more than 20 active cases per caseworker.	**60:1**=50 case workers x $43,000 avg. Sal./Bene. = $2,150,000 (based on a caseload of 3,000)	**20:1**= 150 wkrs x $43K avg Sal/Bene.= $6,450,000 (based on a caseload of 3,000)	100 wkrs x $43K	$4,300,000
		Over age 5, no more than 15 cases.	**60:1**=50 wkrs x $43K = $2,150,000	**20:1**=150 wkrs x $43K = $4,450,000	100 wkrs x $43K	$4,300,000
		No more than 30 adoptive families per caseworker Under age 5	**60:1**=150 wkrs x $43K = $6,450,000	**30:1**=450 wkrs x $43K = $19,350,000	300 wkrs x $43K	$12,900,000
Welfare Assistance	See Non-Base TPA Funding Table					
Housing Improvement Program	See Non-Base TPA Funding Table					

Program

Indian Child Welfare Act

This program supports the goal of ensuring that individual Indians residing on or near reservations who need assistance, receive aid for basic essential needs such as food, clothing, shelter and other services that improve the conditions of Tribal members. This program provides the resources to protect Indian children and prevent the separation of Indian families, as authorized under *Public Law 95-606*, the Indian Child Welfare Act of 1978 (ICWA). BIA and Tribal social services programs are mandated to respond to all reports of child abuse and neglect in Indian Country. In 1998, there were over 27,000 referrals to the more than 500 BIA and Tribal programs for child abuse and neglect investigations. Over 40 percent of the referrals involved some form of substance abuse.

BEST COPY AVAILABLE

Standard/Problem

The number of Indian children at risk is almost three times greater in Indian communities than in the general population. There is a high correlation between poverty and substance abuse for Indian children at risk. Caseload and caseworkers were used for illustration purposes and clerical, supervisory staff and other administrative costs were deleted from the charts. The BIA baseline data is an average caseload of ICWA cases as compared to the same caseload of high risk child welfare cases in a state program. The BIA's average was used to project nationwide totals for comparison. Adoption cases involve considerable complex research and interaction to complete permanency planning and final placement of children. It is not unusual for adoptions and related cases where other alternatives are explored and selected over adoptions to consume substantial effort of caseworkers. The baseline reflects an attempt to accurately measure this work in quantifiable terms.

Program

Services to Children, Elderly and Families

The goal of this program is to ensure that individual Indians residing on or near reservations who need assistance, receive aid for basic essential needs such as food, clothing, shelter, and other services that improve the conditions of Tribal members. These funds support approximately 950 Tribal and BIA social services and other human services staff. They coordinate cooperative work efforts and serve on multidisciplinary teams with various departments relative to services to Indian children and families. These funds help staff develop and provide training material resources on social services to children, elderly, and families.

Standard/Problem

Temporary Assistance to Needy Families (TANF) workers in state programs have caseloads which are almost one-half of the general assistance caseload for tribal and BIA staff. Caseload and caseworkers were used for illustrative purposes and clerical, supervisory staff and other administrative costs were deleted from the charts. The BIA baseline data is an average caseload of general assistance cases as compared to the same caseload of TANF cases in a state program. The BIA's average was used to project nationwide totals for comparison purposes.

EDUCATION:

Education

Johnson O'Malley (JOM) $18,534,000	Dept. of Educ. Pub.L. 103-382 Impact Aid Program Title IX	Amount of Annual Funding per student	$85.11 per student - Based on current JOM service population of 272,000 students	$129.00 per student	$30.00 x 272,000 students	$11,968,000
Higher Education Scholarship $29,495,000	Pell Grant, Work Study, Student Loan Programs., Dept. Of Educ. P.L. 103-227: Sec. 102B	Average amount of annual education grant per student	$1,900 per student - Based on 15,500 students served 28,000 unfunded students	$3,000 per student $3,000 unfunded need	15,500 x $1,100 students $3,000 × 28,000 unfunded students	$17,050,000 $84,000,000
Adult Education $2,663,000	State Voc Tech Institutes Local Community Colleges	Amount of annual funding per student	$133 per student - Based on 20,000 students served	$200 per student	$67.00 x 20,000 students	$1,340,000

Program

Johnson O'Malley Program

The program provides Federal dollars to the school districts because of the additional financial burden the students place on the schools they attend. The JOM program is focused on facilitating the entrance of Indian children into public school systems and providing supportive services, such as computer skills training, to help students be successful.

Standard/Problem

The standard used in comparing the JOM program is dollars per Indian student provided to schools by the US Department of Education under the Title IX program, the Impact Aid program. This program provides school districts affected by Federal activities with funds for general operating expenses. One example is for native students residing on non-taxable reservation lands within a school district.

Program

Higher Education Scholarships

This program supports the mission goal of providing quality education opportunities from early childhood through life in accordance with Tribal needs. Grants are awarded by existing Tribally contracted programs to provide financial aid to eligible Indian and Alaska Native students attending accredited post-secondary institutions.

Standard/Problem

According to a study released in October 1998, (National Center for Education Statistics for the Department of Education entitled "American Indians and Alaska Natives in Postsecondary Education", NCES-98-291, reported that for the 1992-93 school year) 62 percent of American Indian and Alaska Native students needed financial aid. According to this study, only 55 percent of the students who needed financial assistance received some type of Federal aid. They further reported that 54 percent of American Indian and Alaska Natives students had financial needs even after receiving the full financial aid package. This report included all types of financial aid: grants, loans and work-study. Based upon the data contained in this report, for the 1992-93 school year American Indian and Alaska Natives had a total unmet financial need of $232,441,700. Converted to 1998 dollars that need would be $270,800,000. This conversion does not take into account any increase in the student population and, therefore is a very conservative estimate.

The data from the BIA 1997-98 Higher Education Scholarship program is still incomplete but information representing approximately 1/3 of the funding has been compiled. This data shows that the BIA program provides an average scholarship of $1900, which was 30 percent of the total aid the students received. The data also indicated that only 56 percent of the people that requested assistance actually received a scholarship. Extrapolating from these numbers indicates that over 28,000 requests go unfunded.

Program

Adult Education

The Adult Education program provides opportunities for adult Indians and Alaskan Natives to complete the General Equivalency Diploma (GED), thereby increasing their economic competitiveness and reducing their economic dependence on Federal welfare programs. Indians participate in adult basic and community education and development courses to upgrade skills and abilities to match job placements, contributing to a stronger local economy.

Standard/Problem

The standard used in comparing the adult education programs is dollars spent per student by the state of Utah. Their program appears to provide many of the same services that Tribes provide under the adult education funding. The services provided under the Utah program include GED instruction and testing, lifelong learning programs and English as a second language.

PUBLIC SAFELY AND JUSTICE:

Public Safety and Justice

Tribal Courts $11,846,000	New Mexico County Metropolitan Courts	Average Salary of Judges	$32,000/year per judge	$90,154/year per judge	$32,000 salary - $90,154 salary	$58,154
	Nebraska County Courts Washington District Courts	Average amount of funding	158 Tribes receive a total of $6,582,772 With an average of $41,663 per Tribe	158 State Courts receive a total of 23.9 million with an average of $151,265 per State court	$6,582,772 per Tribe minus $23.9 million per State	$17,317,228
Law Enforcement[74]						
Community Fire Protection[75]						

Program

Tribal Courts

The goal of this program is to promote Indian Self-Determination and strengthen Tribal governing systems. Although limited funding has delayed the development of Tribal justice systems by many Tribes and new Federal initiatives (welfare reform and community policing) have increased the demands on Tribal justice systems that underwrite services far in excess of available resources more than 250 Tribal justice systems and Courts of Indian Offenses are supported by BIA funds.

Standard/Problem

Throughout the past several decades, a number of attempts have been made by nationally recognized organizations to compare Tribal courts and state courts. These attempts have been made along the lines of number of cases heard, types of cases heard, service population, proximity to major centers of population, geographic location, salaries and support staff, to name a few of the comparative factors that have been sought. The most interesting outcome of these attempted comparisons is the final conclusion: comparing Tribal courts to state courts is like comparing apples to oranges. Although some Tribal courts may look and act like state courts in some respects, there really is no clear comparison which can take place between the two entities. Tribal courts can range from traditional oral courts as seen in the Pueblos of New Mexico which handle internal, social issues involving custom and tradition and which serve a population of 200 members, to the Cherokee Nation courts of Oklahoma which serve a population of 50,000 Tribal members and which resemble the typical Anglo-American courts that most Americans are familiar with. There are also Alaskan Native villages that have their own traditional forum for resolving issues affecting Tribal members but at the same time must submit to state civil and criminal jurisdiction because of Federal law considerations (*P.L. 83-280*). As a result of other Federal legislation, some Tribal courts are exercising jurisdiction over a particular type of case but must submit all other civil cases to state court jurisdiction

---

[74] This program is not included in the analysis of TPA funds because in FY 1999 the Congress moved the program from TPA to Special Programs and Polled Overhead activity within the Operation of Indian Programs account.

[75] This is a limited program administered only by a few Tribes. In subsequent data collection, this program will be included for analysis.

(Indian Child Welfare Act). *The courts of limited jurisdiction in New Mexico, Washington and Nebraska were selected because the size of these courts most closely corresponds to Tribal courts.* The number of types of cases handled by these state courts of limited jurisdiction sort of correspond to Tribal courts with this important distinction. Tribal courts are limited in the type of case they handle only in the area of criminal law. Pursuant to Federal statutes (contained in Title 18 of the United States Code) and the decisions of the United States Supreme Court in the Oliphant and Duro cases, Tribal courts do not have the authority to hear cases in which non-Indians have been charged with criminal offenses against the Tribe and cannot entertain cases of a certain type or degree even if committed by a Tribal member against another Tribal member within their own reservation (see 18 U.S.C.A. sec. 1153).

There are also some Tribes which have land bases in two or more states which causes significant jurisdictional problems and confusion amongst court personnel, law enforcement officers and the general public. Fort Mojave is a prime example of this with land holdings in the states of California, Arizona and Nevada. To complicate matters further, California is a *PL-280* state exercising criminal and civil jurisdictions over Tribal members who commit offenses within that portion of Tribal lands located within the state of California. Nevada was also a *PL-280* state until the 1970s when jurisdiction was retroceded back to the Tribes. The issue of gaming further complicates this one example because of the recent battle over Tribal gaming operations on Indian land as evidenced by the Proposition 5 referendum voted on last year by all eligible voters of California and although the Fort Mojave reservation straddles three states, the total membership is just over 1,000 members.

Tribal courts also entertain civil lawsuits brought by non-Indians within their jurisdiction if their claim arose within the reservation boundaries or if a Tribal member or Tribal interest is involved. Yet Tribal courts do not enjoy the same ability to hear and dispose of criminal matters when a non-Indian is involved in criminal behavior within Indian Country. These two opposing philosophies often do not make sense to all the parties involved, but it is a legal reality that binds Tribal courts.

At this time there are 554 Federally recognized Indian Tribes. Each one of these Tribes to some degree maintains a method of maintaining social order within their respective Tribes. Whether it is by a Tribal court, CFR court or traditional peacemaking forum is determined by the Tribal government in its capacity as a sovereign. Although there is a current move to make certain subject matter more uniform in its application by Tribal courts (i.e. child support, custody and child welfare issues), the manner in which a particular Tribal court decides to engage in the adjudicatory process depends on the Tribe itself. How any two Tribes determine, for example, who pays child support and in what amount may vary greatly.

The BIA is currently engaged in exploring partnerships with other Federal agencies because of the meager amount of funding currently available to Tribal justice systems through BIA. Under the President's crime bill and law enforcement initiative, $5 million was appropriated to DOJ to assist Tribal judicial systems. These funds, although welcome by Tribal justice systems, will not be sufficient for the extended and comprehensive funding that will help Tribal courts achieve the continuity and legitimacy they are striving.

COMMUNITY DEVELOPMENT:

Community Development						
Adult Vocational Training and Direct Employment Program $10,859,000	JTPA, Title IV A, Dept. Of Labor/Welfare Reform (TANF), HHS/State and municipal programs/Dept Of Education	Funding, costs per participant, positive termination rates, services provided	$2,621 per student	$3,800 per student	3,738 students x $1,179	$4,407,102
Economic Development/ Loan Guarantee $16,030,000	Commercial Banks	Loans Processed (applications)	$12,000 per application	$12,950 per application	$950 per application x 60 applicants	$57,000
		Loans Serviced	$1,914 per loan	$7,000 per loan	$5,086 per loan x 752 loans	$3,824,672
		Technical Assistance	$635 per inquiry	$850 per inquiry	$215 per T/A x 850 inquiries	$182,750
Road Maintenance	See Non-Base TPA Funding Table					

Program

Adult Vocational Training and Direct Employment Program

The purpose of the Adult Vocational Training Program is to assist Indian individuals acquire job skills necessary for full-time unsubsidized employment. Within that framework, the program provides testing, vocational counseling and /or guidance to assist program participants with career choices relating personal assets to training options and availability of jobs in the labor market. The program provides for full-time institutional training in any Federal or State accredited vocational or trade school, apprenticeship and on-the-job training for periods not to exceed 24 months in length, with the exception that Registered Nurse training may be for periods not to exceed thirty-six months.

The end result is to increase occupational skills attainment and earnings of participants through employment. Reduce welfare dependency and enhance the productivity and competitiveness for the Indian people.

Standard/Problem

When determining the standard to use to compare with AVT we must consider Welfare Reform. The comparable programs were JTPA, Title IV A, Department of Labor/Welfare Reform, HHS/State and municipal programs and the Department of Education.

Program

Economic Development/Loan Guarantee Program

The program attempts to provide Tribes with the resources necessary to develop a self-sustaining economic base. Agency staff are the first to review and recommend approval/disapproval for loan guarantee requests.

Agency duties primarily focus on promoting the loan program and providing technical assistance to borrowers, including review of loan applicant's eligibility and adherence to program requirements.

Standard/Problem

Administrative resources for managing the Indian Loan Guarantee program are completely insufficient for proper program oversight and management. The primary functions of the Area Credit staff are: 1) provision of technical assistance and responding to inquiries, regarding the program; 2) processing loan applications; 3) loan servicing; and 4) processing trust mortgages.

All BIA Area Offices lack sufficient staff and administrative resources to provide proper technical assistance to applicants. As a result, new applications for the Indian Loan Guarantee program oftentimes lack sufficient information upon which to make an affirmative decision and many potential Indian businesses never have the opportunity to receive the necessary start-up capital. Many more never even begin the application process because they lack the "know-how" to prepare an adequate business plan. Existing loans do not receive the level of servicing and attention they should and, therefore, the BIA experiences a default rate four to five times higher than private sector statistics. In most cases, these defaults could have been avoided and an Indian business saved with the provision of some technical assistance to borrowers who encounter difficult financial conditions for which they were unprepared.

Furthermore, once a loan has been foreclosed on, the BIA does not have sufficient resources to recover the government's investment in an aggressive manner. Issues of bankruptcy, probate, etc. complicate many loans. By not having proper resources to pursue collateral, the Federal government oftentimes takes a greater loss than it should have. Staff resources for managing a guarantee program with the lending authority and existing portfolio should be more than 100 percent higher than current funding levels.

RESOURCE MANAGEMENT:

Resource Management						
Natural Resources, General[76]						

---

[76] Natural Resources, General, and Other Resources Management (Tribal Design): These funds ($4,015,000) are used for: (1) costs of personnel services for Natural Resources Officer or similar positions responsible for various natural resource programs such as forestry, agriculture, water resources, wildlife and parks and minerals and mining, (2) *P.L. 93-638* contracts with Tribes; and (3) other resource management programs specifically designed by Tribes to meet their needs (information on use of these funds was determined through random sampling of BIA Agencies.) Since programs as described above are not operated by other Federal, State or local governments, the TPA funding for Natural Resources General and Other Resources Management (Tribal Design), for the purpose of this report, are consolidated with other TPA Resources Management Programs: Agriculture ($1,526,000); Forestry ($1,646,000); Water Resources ($281,000); Wildlife and Parks ($402,000); and Minerals and Mining ($161,000).

Resource Management (Continued)

Agricultural/ Range $21,208,000	Natural Resource Conser-vation Service	Ratio of professional soil conser-vationists per acre of land managed	1 professional soil conservationist per 459,000 acres of agricultural land managed	1 professional soil con-servationist per 17,000 acres of agricultural land managed.	1990 Position and Land Analysis Survey[77]	62 Soil Conservationists 3,100,000
	Bureau of Land Management	Ratio of professional range conservationists per acre of land managed.	1 professional range conservationist per 577,000 acres of range land managed	1 professional range conservationist per 322,000 acres of range land managed.		77 Range Conservationists 3,850,000
Forestry $22,580,000	U.S. Forest Service (USDA)	Timber production costs per commercial forest acres	$7.18 per acre	$16.25 per acre	5,754,569 acres x $9.07	52,193,940
		Backlog of main-tenance of forest access roads (to meet USDA road standards	$0 per mile	$30,000 per mile	8,000 miles of forest access roads x $30,000	240,000,000

---

[77] The 1990 Analysis was conducted on a state by state basis (24 states were involved) where land management activities were of a similar nature. There were over 15,000 positions in 22 different series that were included in the survey. The Soil and Range Conservationists were selected in the final analysis due to the commonalities of the work performed. The overall grade used in conversion of FTE to dollars was GS 10; the average grade in the analysis. The dollars listed above deals only with FTE and does not reflect any support costs associated with the position.

Water Resources[78] $6,346,000	Mni Sose Tribal Water Rights Consortium	Intertribal resources management consortium, w/staff of 3 and non-TPA BIA funded budget, $315,000, servic-ing a membership of 27 Tribes	An equal distribution of FY 1998 adjusted enacted TPA appropriations of $4,065,000 would afford each Tribe a total of $7,298 to staff a water resource program	Mni Sose's operating cost ratio of $11,667:1 member Tribe. ($315,000/27 = $11,667)	The difference in funding between Mni Sose's per member Tribe cost ($11,667) & TPA's per Tribe amount of $7,298 = $4,369 times 557 Tribes	19,087,941

---

[78] "Adjusted" means the subtraction of $2,281,000 which is currently prioritized for BIA performance of water-related rights protection services. All Tribes have an interest in some aspect of water resources management as a trust and cultural resource. "To staff a water resources program assumes that a Tribe would do one of two things; a) combine water resources funds with other natural resources program resources and accomplish threshold management capability; or b) join in a consortium of Tribes with their hydrologic area (basins, sub-basins or watersheds) and under such an arrangement achieve greater management efficiency through the economy of operational scale. Mni Sose is not subtracted from the formula because its members would likely to fund its operation from within an appropriately funded TPA water resources program.

Resource Management (Continued)						
Wildlife and Parks $5,400,000	U.S. Fish & Wildlife Service, National Refuge System U.S. Forest Service Bureau of Land Management	$ per acre $ per acre $ per acre	$.09/acre for all fish & wildlife management activities of 55 million acres[79] Same as above Same as above	$2.09/acre for FWR & and public use activities $.51/acre for habitat work only[80] $.11/acre for habitat work only	$.90 average/acre times 55 million acres = $49.5M less $5M in current TPA funds, $6M in current ORP funds, and est $2M in S-G compacts[81]	36,500,000
Minerals and Mining[82] $2,345,000	Bureau of Land Management; Minerals Management Service; U.S Forest Service	Mineral acres/total mineral & petroleum staff	6,155,000 ac/staff	1,020,000 ac/staff	6 X 3 X $79,500	About 30-40 Tribes are/or have the poten-tial to be heavily involved w/oil, gas/coal or other minerals which results in a shortfall of 18 FTE 1,471,000

Program

Agriculture

This program supports the goal of assisting American Indian and Alaskan Native in developing conservation and management plans to protect and preserve their natural resources on Trust land and shared off-reservation resources.

---

[79] The $.09/acre expenditure on Indian land covers all fish, wildlife and outdoor recreation management activities, including habitat and population management, hunting and fishing regulation and enforcement, etc.

[80] The expenditures for the Forest Service and BLM focus on habitat management because the states have responsibilities for population management and hunting/fishing control, whereas the expenditures for National Wildlife Refuge lands include all aspects of resource management.

[81] The $.90/acre expenditure was derived by averaging the FWS, USFS and BLM values. In addition to the $5 million currently budgeted in TPA for fish and wildlife, there is also approximately $6 million budgeted for continuing on-reservation fish and wildlife programs in Other Recurring Programs (most of Wetlands Management, most of Fish Hatchery Operations and Maintenance, all of Bison Management, and 31 individual Tribal programs), and approximately $2 million for on-reservation fish and wildlife programs in Self-Governance compacts. Therefore, the overall need reflects a reduction of $13 million from the calculated $49.5 million level.

[82] BIA oversee about 6 times the acreage of comparable agencies. There are currently 3 geo-science professionals working at Areas/Agencies. Therefore the need is calculated by multiplying 3 staff times 6 times $79,500 (GS-12/4 plus EBC and travel) = $1,471,000. This calculation excludes the Osage Agency due to their unique status as explained in the narrative.

Standard/Problem

In 1990, BIA prepared a position and staffing analysis which in part compared the ratio of resource staff per acre of Indian trust land administered. This ratio was compared to that of United State Department of Agriculture (USDA) and other agencies under like-management conditions. The outcome revealed that in 1990 the BIA would have had to more than double its resources staff to be on the same par as the other agencies in 1990. The average grade was GS-10 for professionals and GS-7 for technicians. Taking into account the reductions in staffing, the differences in human resources is much greater than in 1990.

Program

Forestry - Timber Production

Forest management activities consist of forest inventory and management planning systems including the development of Integrated Resource Management Plans, forest products marketing, timber sale management, forest protections, woodland management, forest productivity enhancement, and intensive forest development procedures.

Standard/Problem

The TPA portion ($20,243,000) of the Indian Forestry Program is the base program funding, which accounts for 84 percent (307) of the FTE in the program. These staff are involved in all aspects of the forestry program (forest development, forest management inventories and plans, woodland management, forest program management, and forest protection) in addition to timber production activities. The remaining 16 percent (59) of the FTE are funded from the Forestry non-recurring programs portion ($15,699,000) of the Indian Forestry Program. These staff are directly involved in the planning and supervision of specific forest management projects. The distribution of the non-recurring funds are competitive and project based. The majority of the non-recurring funds are used for on the ground activities such as tree planting (purchasing seedlings, hiring planting crews), pre-commercial thinning (hiring contractors), forest inventories (buying aerial photographs, hiring crews), forest management planning (environmental studies, public involvement), woodland projects (not on commercial forest land), ecosystem restoration (fish and riparian habitat improvement), and timber harvest initiative (additional timber production in the northwest). Ecosystem restoration and the timber harvest initiative are part of the President's Forest Plan for the Pacific Northwest and Northern California.

The funding level shown for the US Forest Service (USFS) is for timber production activities only and does not include other USFS mission activities (i.e., general administration, recreation etc.). The funding level comparison was conducted by an independent team of experts and published in the report, "An Assessment of Indian Forests and Forest Management in the United States" dated November, 1993. Not all of timber the revenue generated by USFS goes into the U.S. Treasury. In 1997, only 37 percent of the timber revenue was deposited in Treasure. Approximately 25 percent of the revenue is given to local governments for in-lieu-of taxes payments. The remainder is deposited into accounts that are available to the USFS to reinvest in the resource for the following types of activities: tree planting, brush disposal, and timber salvage sales. These accounts are not unlike the forest management deductions that the BIA collects from Indian timber revenues. Based on our latest analysis (FY 1996), Federal appropriations only account for less than 60 percent of the total expenditures for Indian forest management. The Tribes contribute the rest.

Forest Roads:
Standard/Problem
The forest access roads that are not in the BIA road system and are therefore not eligible for funding from Highway Trust Funds or other BIA road maintenance funds. Funds would be for remedial actions to meet the USFS road standards. To maintain these roads, to those standards, the Indian Forestry Program would have to be funded for road maintenance at the same level as the Forest Service.

Program
Water Resources
The Water Resources program is intended to support the cost of a Tribal staff managing water resources. The term "management" means inventorying the quantity and quality of surface and ground water, as well as planning for the development and use of those water supplies.

Standard/Problem
Mni Sose is a voluntary consortium of Tribes focusing on the management of Tribal water resources in the Missouri Basin. It is modeled after the Columbia River Inter-Tribal Fish Commission. Mni Sose is funded by BIA in part in FY 1999 from non-recurring Water Resources Management, Planning and Pre-Development funds at a level of $200,000.

Mni Sose has shown that a consortium of Tribes using Federal dollars can collectively perform water resources management functions, with the potential of achieving sophisticated levels of management expertise. It is important to note that Mni Sose is only in its fifth year of operation and its capabilities are currently limited to information gathering and the coordination communications among member Tribes, using a threshold staff of three persons. Despite its current limitations, Mni Sose is recognized by the Department of the Interior and other Federal agencies as performing threshold management functions for member Tribes.

The analysis exhibited in the table assumes that other Tribes like those in the Missouri Basin would choose to form consortia in their hydrologic areas and engage in management activities from within those consortia. Only if other Tribes choose to form consortia would the economy of scale demonstrated by Mni Sose be achieved. Conversely, if Tribes do not choose to form consortia, there would probably be no efficiency in several Tribes operating on $11,677 per Tribe.

In the case of individual Tribes working alone, they typically use such funds to offset the salary cost of a generalist in natural resources who in turn seeks out other sources of funding to finance water resources project work. Under such circumstances, individual Tribes have a very difficult time developing specific management knowledge and expertise.

Program

Wildlife and Parks/Fisheries Management

This program relates to the long-term goal of successfully supporting the prudent management of natural resources on Indian lands by providing assistance to Tribal needs and efforts in the areas of fisheries management, wildlife management, outdoor recreation management, public use management, conservation enforcement and related fields.

Standard/Problem

The standard used in comparing the Indian fish and wildlife resource program conducted through the TPA budget category is dollars expended per acre compared to dollars expended per acre by the U.S. Fish and Wildlife Service (for the National Refuge System), the U.S. Forest Service and the Bureau of Land Management (BLM). The Fish and Wildlife Service expends $2.09 per acre on the refuge system which includes all fish and wildlife population work, habitat and public use management and other activities, while the Forest Service and Bureau of Land Management expend $0.51 and $0.11, respectively, primarily for habitat work, since the states retain management authority over related fish and wildlife populations. Only $0.09 per acre of TPA funds are spent on fish and wildlife management on Indian lands, even though Tribes are responsible for all aspects of population, habitat and public use management on their reservations. Without information from more than 150 Tribes on their respective needs, it is difficult to estimate an overall unmet need. However, a conservative estimate of average expenditure of $0.90 per acre of Tribal land would provide Tribes with a much more reasonable base to administer fish, wildlife and related outdoor recreation resource management programs on Indian reservations.

Program

Minerals and Mining

The program supports geo-technical staff involved in Tribal mineral resource activities. It encourages Tribes and individual Indians to protect and preserve their natural resources by managing their use in accordance with integrated resource management. Some activities include: feasibility studies and mining plans, exploration and development; environmental reviews involving assessments and impact statements; mineral resources; oil and gas inspection, enforcement, and site security.

Standard/Problem

The distribution of TPA funds and staffing supported by that funding, as shown below, is totally inadequate in all areas of the BIA's jurisdiction, except at the Osage Agency in Oklahoma. There are only three geoscientists, one each for the Albuquerque, Phoenix and Portland Area Offices, while all of the remaining positions are realty specialists. The BIA does not have a comprehensive national program, staffed with qualified minerals scientists, to address the critical aspects of energy and minerals development on Indian lands. A recent review by BIA's Energy and Minerals Office in Lakewood, Colorado, revealed that for each geoscientist in the BIA there are 6,155,600 acres of trust Indian lands. This compares to 1,020,000 acres of Federal land per geoscientist administered by the BLM. Comparatively, the BIA oversees about six times the number of acres per staff member than BLM staff.

BIA cannot meet its trust responsibility to the Indian mineral owners with present staffing levels for geoscientists, except at Osage. The Lakewood Office review determined that, at a minimum, about 20 new positions must be added to address the multitude of critical issues related to energy and minerals development which presently are not being adequately addressed. The following Area Office summaries detail how the TPA funds are utilized for management of Indian mineral resources and shows how thinly stretched the geoscience personnel are in almost all the areas except for Osage.

Muskogee Area $1,427,000. This funding goes to the Osage Agency to fund the Branch of Minerals. This Branch is made up of the Engineering Section, Lease Management Section, Field Section, and Minerals Accounting Section as follows:

Navajo Area $345,000. This amount funds three positions at the Window Rock portion of the Area Office and three positions at Farmington Indian Minerals Office (FIMO). The FIMO is a pilot office funded by the BIA, BLM, and MMS. These positions are realty personnel, except for the FIMO office director who has a degree in minerals economics.

Phoenix Area $166,000. This funding is divided into $67,000 for part of the Realty Branch at the Area Office, $92,000 for the Petroleum Engineers office at the U&O Agency, and $7,000 for the Pyramid Lake Tribe. There are currently more than 750 oil and gas wells producing at the U&O reservation and they expect between 160 and 400 new wells will be drilled within the next four years. The Pyramid Lake Tribe retains temporary geoscience expertise on an as "needed basis," and presently do not have development or production activities on their lands.

Portland Area $77,000. This funding is used at the Spokane Agency. To support one geologist position, which provides oversight on reclamation of defunct uranium mining activities on the Spokane Indian reservation.

Anadarko Area $63,000. This funding is used to cover realty specialist positions to provide technical assistance to the Agencies and Self Governance Tribes regarding oil and gas development and production as well as the Royalty Distribution and Reporting System.

Albuquerque Area $59,000. This funding is divided to provide $40,000 to the Area Office Petroleum Engineer who covers all the reservations producing oil and gas in the San Juan Basin area in New Mexico, and $19,000 to the Laguna Agency. The Area Office Engineer oversees 2,200 producing oil and gas wells on the Jicarilla reservation, 2,000 oil and gas wells on the Southern Ute reservation and 125 oil and gas wells on the Ute Mountain Ute reservation. The Laguna Pueblo had the largest uranium mine in the U.S. on their lands. The funding at Laguna is used for oversight responsibilities associated with reclamation of the uranium mine.

Aberdeen Area $27,000. This funding is used by the Realty Office, at the Ft. Berthold Agency, in North Dakota for administration of oil and gas development and production on the Ft. Berthold reservation.

TRUST SERVICES:

Trust Services						
Trust						
Other Rights						
Realty/ Appraisals $21,875,000	N/A	$ amount for a GS-9/1 to complete a transaction GS-9 Salary = $41,060 per year / 26 pay periods = $1,579.23 per pay period = 80 hours. $1,579.23 / 80 hours = $19.74 per hour $19.74 x # of hours to complete transaction.	# of Transactions completed in one year 14,000 surface leases 500 sub-surface leases 3,000 rights-of-way 7,400 land acquisitions 7,500 sales 27,000 appraisals	N/A	Pending/Backlog 10,000 surface leases[83] 500 sub-surface[84] 5,700 probate 2,700 rights-of-way[85] 11,200 land acquisitions[86] 12,500 sales[87] 40,000 appraisals[88]	1,184,400 78,960 4,965,000 213,192 884,352 987,000 18,316,80 0
Environmental Quality Services[89]						
ANILCA[90] $1,506,000						

---

[83] 114,000 surface leases x 4-6 hours processing time ($19.74 x 6 = $18.44 per lease)

[84] 500 sub-surface leases x 6-8 hours processing time ($19.74 x 8 = $157.92 per lease)

[85] 3,000 rights-of-way x 2-4 hours processing time ($19.74 x 4 = $78.96 per right-of-way)

[86] 7,400 land acquisitions x 3-4 hours processing time ($19.74 x 4 = $78.96 per land acquisition)

[87] 7,500 land sales x 3-4 hours processing time ($19.74 x 4 = $78.96 per land sale)

[88] 27,000 appraisals @ GS-12 = $59,540 per year / 26 pay periods = $2,290 per pay period / 80 hours = $28.62 per hour x 16 hours processing time = $457.92 per appraisal.

Processing times are estimates based on knowledge of personnel at the Central Office.

[89] The FY 1998 TPA funding for approximately 13 FTE specifically identified with the Environmental Quality Services Program is $1,147,000. The staff are responsible for collecting information, preparing documents, and providing technical assistance to agency managers in environmental and cultural resource laws. Staff in other BIA programs are also responsible for performing similar functions in order to comply with environmental and cultural resources laws but the BIA does not maintain records to determine actual costs associated with this bureauwide responsibility. Since the Environmental Quality Services Program supports other TPA programs, for the purposes of this report, the funds for Environmental Quality Services are consolidated with the following programs: Road Maintenance ($57,000); Real Estate Services ($803,000), Forestry ($172,000); and Minerals and Mining ($115,000).

[90] For Alaska Tribes only.

BEST COPY AVAILABLE

ANSCA Historical & Cemetery Sites[91] $606,000						

Program
Realty/Appraisal

The goal of this program is to ensure the BIA's trust responsibility is fulfilled by assuring that Indian Tribes and individuals receive fair market value from real estate transactions which include, but are not limited to: acquisitions, disposal, leasing (surface and sub-surface), land use planning, rights-of-ways, exchanges, partitions, permits, and easements.

Standard/Problem

Due to the fiduciary responsibility to individual Indians and Tribes, BIA realty/appraisal programs cannot be compared to any other Federal agency. The BIA realty/appraisal programs have responsibility for the management and administration of Indian trust/restricted lands owned by approximately 300,000 individual Indians and 335 Indian Tribes within the continental United States and 220 Alaska Native groups. The BIA has thousands of landowners compared to BLM's one owner, the United States. The BLM may have a larger number of acres to manage. However, because of the ownership, BIA's transactions require a more complex processing and additional time to complete comparison of the BIA agencies and BLM's field offices at other Federal, state and local governments was not performed for the following reasons: (1) Consent - BIA is required to obtain numerous landowner consents in order to effect land transactions, i.e., acquisitions, sales, leases, disposals, right-of-ways, permits, exchanges, patents in fee, land use planning and counseling, etc., whereas other Federal and state agencies deal with one owner (U.S. government or state government); (2) Probate - BIA is required to probate deceased landowners estates and provide estate planning, whereas other Federal and state agencies are not; (3) Statutes/Regulations - BIA must incorporate statutes, regulations and court decisions that address the rights of Indian Tribes and individual Indian owners in the management of their lands which do not exist with other Federal and state governments; (4) Trust Responsibility/Accountability - BIA is the primary agency of the Federal Government charged with the responsibility to administer Federal Indian policy and to discharge the Federal trust responsibility to protect and preserve trust/restricted lands and trust resources for American Indian Tribes, Alaska Native groups and Tribal organizations.

Program
Environmental Quality Services

The TPA Environmental Quality Services program is responsible for collecting information, preparing documents, and providing technical assistance to agency managers in environmental and cultural resource laws, such as the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), the Archeological Resources Protection Act (ARPA), and the Native American Graves Protection and Repatriation Act (NAGPRA).

---

[91] For Alaska Tribes only.

Standard/Problem

It is difficult to determine the unmet need in the program for several reasons. First, the FY 1999 TPA funding for this program is $1,141,000.00, which supports approximately 13 FTEs at the Area or Agency level specifically identified with the Environmental Quality Services program. The BIA's Central Office Environmental (Waste) Management budget, however, provides funding for some of this program as well, perhaps eight of the 12 Environmental Scientist FTEs funded through the Central Office spend some amount of time working on NEPA issues (perhaps $440,000 of the Central Office dollars expended for Environmental Scientist salaries is allocated to work on NEPA projects).

Second, staff in other BIA programs are also responsible for performing similar functions in order to comply with environmental and cultural resource laws. For example, staff in the roads or forestry departments at a BIA Area Office or Agency may have NEPA or cultural resources responsibilities for the projects of that department. The BIA, however, does not maintain records to determine actual costs associated with this bureauwide responsibility.

Third, the BIA does not keep centralized records on the number of projects that it performs, or needs to perform, under the statutes listed above. Therefore, it cannot easily analyze what staffing needs are required to perform those projects.

Nonetheless, it is clear that even with staff positions funded from both the TPA and the BIA's Central Office accounts, the BIA does not meet the need for environmental and cultural resources protection. A 1995 BIA study indicates that the BIA's average annual need for NEPA, ARPA, NHPA, and NAGPRA totaled $15,050,000. The total TPA and Central Office expenditures for this purpose is $1,581,000, leaving an unfunded difference of $13,469,000 (for the statute's listed above only; the unmet need for compliance with pollution control statutes is not addressed here, but is much larger).

Reports that are available from BIA Areas confirm the general scope of the unmet need:

The Minneapolis Area reports that they perform approximately 100 Environmental Assessments each year, and that the four Agencies in the Area perform, or should perform, a total of approximately 750 Environmental Assessments. Yet only one of these Agencies has an environmental protection specialist on staff. In addition, the Area issues about 180 categorical exclusions under NEPA each year, and review hundreds of NEPA documents prepared by other Agencies for projects that might effect trust resources.

The Aberdeen Area provides extensive guidance on up to five Environmental Assessments and one Environmental Impact Statement each year and review five EIAs and up to 10 EAs prepared by other entities each year. There are 10 to 50 projects completed each year in the Area with no or inadequate NEPA compliance. Yet the Area does not have a full-time NEPA coordinator.

The Phoenix Area processes several hundred NEPA documents a year and has one person working on NEPA issues. The Area Archeologist processes 900 projects a year under NHPA and ARPA, and estimates that only 25 percent of what the BIA should be doing to comply with those statutes.

Tribal Priority Allocations (TPA) - NON-BASE FUNDING

TPA Budget Category	Program	Method of Distribution	FY 1998 Appropriation	Total Requirement	Preliminary Need and Unfunded Program Amounts
Tribal Government	Contract Support Funds (CSF)	CSF are distributed to Tribal contractors based on Indirect Costs rates Tribes negotiate with the Office of the Inspector General. Also, if a Tribe is small and does not have the administrative capability, Area Office Contracting Officers will negotiate a reasonable lump sum amount. Because appropriations have been insufficient to meet identified need, the BIA has distributed based on pro rata share to ensure that all Tribal contractors receive the same level of funding.	$105,829,000	$131,713,697	$25,894,697 (20%)
Human Services	Welfare Assistance	Welfare Assistance funds are distributed to Tribes and BIA agencies based on reported need. While the population in Indian Country has increased over the last few years, funding has remained at the same level. The Tribes and BIA have prioritized the use of avail-able funds in order to stay within appropriated levels. If funds are insufficient to meet need, the BIA distri-butes based on pro rata share to ensure that all Tribes and Agencies receive the same level of funding.	$93,960,000	$93,960,000	-0-
	Housing Improvement Program (HIP)	HIP funds are distributed to Tribes and BIA agencies based on eligible HIP applicants. Funds are distributed to complete at least one project. There are currently 30, 179 HIP eligible Indian families.	$16,030,000	$434,738,175	$418,708,175
Community Development	Road Maintenance	Road Maintenance funds are distributed to the Areas based on the summarized needs of their Tribes and agencies. The Areas receive funds based on the need shown for itemized program activities that have applied weight percentage factors and are dependent upon appropriations. Certain critical program activities are 100% funded. To stay within appropriated levels other program activities are funded at percentages much lower than that needed. The Total Requirement = BIA system miles x cost per mile (1995 state avg.) $100,075,000 = 25,000 miles x $4,003/mile	$25,456,000	$100,075,000	$74,619,000

BEST COPY AVAILABLE

APPENDIX 4

Dear Tribal Leader:

As you may be aware, BIA and a group of tribal leaders and consultants have been working for the past nine months on a report for the Senate Appropriations Committee on the distribution of Tribal Priority Allocation (TPA) funds among the Tribal governments we serve. The TPA Workgroup has nearly completed its work, and I am writing to ask for your input on the issue.

I formed the TPA Workgroup in response to Section 129 of the Fiscal Year 1999 appropriations legislation for BIA. Section 129 directed that BIA present to the Appropriations Committee by April 1 a report on the distribution of TPA funds and recommendations on how TPA funds should be allocated in the future. The Workgroup organized itself into several subgroups, each of which has produced a report to the BIA and me. With this letter you will receive a copy of each of the subgroup reports.

BIA is now taking the material produced by the subgroups and developing the final report. Before submitting that report, we are anxious to have your ideas on the issues. I have asked the twelve Area Directors to arrange for consultation meetings in their respective areas to obtain tribal input, and we welcome any written comments you might wish to submit. While I will not be able to meet with Tribes in each of the twelve areas, I will be meeting with tribes in the Aberdeen, Albuquerque, Billings, Navajo, and Phoenix areas. I also am inviting the leadership of certain Self-Governance Tribes and certain tribes with large gaming operations to meet with me in Washington to discuss the issues.

I should emphasize that the subgroup reports we are transmitting with this letter do not necessarily represent BIA's views or my views. I have made clear to the Workgroup, and the Senate Appropriations Committee made clear to me, that the Workgroup is advisory only; the final report to the Committee will represent the views of the BIA and the Interior Department. Because we have only received the Subgroup reports in the last few days, we do not yet have a draft of the final report to share with you. To facilitate and focus your discussion of the issues, enclosed is a summary of the report and some of the recommendations we are considering.

Your views on these matters are extremely important to BIA and to me. I urge you to participate in the regional consultation meetings and express your views on all of these matters and any related issues that you wish to bring to my attention. I assure you that we will consider carefully each and every opinion expressed.

Thank you in advance for your participation in this process. These are critical issues for the future of the government-to-government relationship between your Tribe and the United States. I ask that you consider these issues carefully and share your best advice with us so that we may accurately report tribal opinion on this matter. Should you have any questions concerning the regional consultation meetings, please be in touch with your Area Director and with your Area representative to the TPA Workgroup.

BIA Report Outline

The report will first describe some basic demographics of Indian Country. We will discuss the service populations of the tribes, the trust acreage of the reservations, and information from the most recent labor force reports we have produced.

The report will then examine the obligations the United States has undertaken to the Tribes. We will discuss the various sources of Federal obligations, such as treaties, agreements, statutes, and executive orders, and how courts have described those obligations. We will explore systematically how the various TPA programs relate to these Federal obligations and discuss how the various authorizing statutes for BIA programs direct us to distribute program funds to the Tribes. As you may know, although the Committee directed us to consider tribal business revenues in developing our recommendations, it also said that we were not to consider revenue from tribal trust assets. The report will discuss why the Committee's distinction between trust and non-trust income is sound, and emphasize that even if Congress were to redistribute TPA funds to reflect the relative needs and revenues of the Tribes, trust programs should not be affected negatively by the redistribution, because the Federal responsibility for Indian trust assets is enforceable regardless of the prosperity or poverty of the Tribes.

The report will then turn to how the United States funds the various obligations it has undertaken to the Tribes. Using information developed by the Office of Management and Budget, Congressional Research Service, and the Workgroup, we will show the appropriations levels for various tribal programs over the last two decades for all Indian programs of the Federal government. We will then look more specifically at funding for the Bureau of Indian Affairs and its TPA programs. The report will demonstrate that the growth in funding for Indian programs has not kept pace with the overall growth in Federal spending, or even with increased costs faced by the Tribes and BIA due to inflation.

The report then will delve into how BIA funds are allocated to the Tribes. We will point out the differences in how we fund self-governance compacts and self-determination contracts, and how we fund services provided directly by BIA. We expect that the report will reveal a number of discrepancies, such as Tribes of similar population and economic circumstances having disparate shares of funding for social service programs, and Tribes with similar land bases having disparate shares of trust program funding. The reasons for these disparities will be explained. Some of the reasons are historical, some are because of line item appropriations for a specific Tribe's programs, some are because of BIA decisions, and some simply reflect subtle differences in tribal circumstances. Certain systematic disparities will be examined as well. For example, Self-Governance Tribes tend to receive funding beyond what they would receive if they were contracting under the Self-Determination Act or receiving services directly from the BIA. We have identified reasons for this disparity, most relating to instructions we received from Congress and to Interior's aggressive implementation of the Self-Governance policy.

The next subject of the report will be tribal needs. We have identified objective standards against which to measure TPA funding to the Tribes. It will not surprise you that BIA funding for tribal programs falls far short of tribal needs. We will quantify these programmatic shortfalls to the extent possible. We will then show how certain Tribes use their own resources to supplement our TPA funding to address the shortfall. (These Tribes volunteered financial information, for which we are most grateful.) Even with the tribal contributions to these programs, there remain substantial unmet needs.

We then will turn to the subject of tribal revenues, particularly gaming revenues. We have not asked Tribes to provide detailed reports on their business revenues, but have obtained information on gaming revenues. We believe that, while there are exceptions, most large amounts of non-trust revenues received by Tribes are from gaming. We will discuss the revenues of a number of Tribes, on an anonymous basis, and how those revenues compare to the needs of the Tribes. We will look at the respective TPA shares of these Tribes and analyze whether TPA represents a substantial share of the tribal budgets. The key question is: Should TPA funds be transferred from these Tribes to more needy Tribes? To answer this question we look at whether precedents exist for "needs testing" either in Indian programs or in Federal programs for state and local governments. We then ask whether, even if Congress were to require us to transfer funds from the most prosperous to the most needy, would the amounts of TPA funds transferred have any meaningful impact of the programmatic funding shortfalls discussed above.

The final portion of the report will discuss options and alternatives for the allocation of TPA funds. We are most anxious to hear your views on all of the information presented above, and to have your thoughts on the following questions:

1. Should we continue to exclude funding for contract support, General Assistance, the Housing Improvement Program, and Road Maintenance from tribal base funding?

2. Should we continue to spread general increases in TPA funding proportionately to all Tribes, or should we target the Tribes with the greatest unmet need for such increases? Should we first meet all inflationary costs of all Tribes before using a need-based formula to distribute the remainder?

3. How could we restructure our budget submissions to the Congress to more clearly present information on Self-Governance, Self-Determination, and direct service programs on a tribe-by-tribe basis?

4. What information should the Tribes be asked to submit to support requests for appropriations, and what reporting should be required to determine the effectiveness of BIA and tribal programs?

5. Should we do away with the "Aid to Tribal Government" and "Consolidated Tribal Government Programs" line items in favor of more specific line items that better describe the tribal activities funded by these line items?

6. What should our policy be for funding extremely small Tribes? Should the Congress require regional consortia in order to create economies of scale? Should the Congress encourage such consortia and how might it do so?

7. Should existing TPA allocations be revised to eliminate disparities among Tribes? Should we rely instead on targeting increases in future funding levels to eliminate these disparities? Is it realistic to rely on future increases?

8. Should the most prosperous Tribes be required to give up their TPA allocations? Under what circumstances? How should we redistribute any savings realized under such a policy? Are there any programs that must be funded for even the most prosperous Tribes?

9. Instead of requiring the most prosperous Tribes to return their TPA allocations, should we encourage them to do so? What incentives might be offered to encourage the Tribes?

10. If we are directed by the Congress to reallocate TPA on the basis of tribal needs and tribal revenues, what information should BIA be required to collect and how should BIA collect it? If BIA collects proprietary information, what measures should we take to protect its confidentiality?

BIA/TRIBAL WORKGROUP ON TRIBAL NEEDS ASSESSMENT

- MEMBERSHIP -

BIA/TRIBAL WORKGROUP ON TRIBAL NEEDS ASSESSMENT CONTACTS

As of August 13, 1998

Name	*Title*	*Address*	*Telephone*	*Fax*	*E-Mail*
A					
Allen, W. Ron	Chairman Jamestown S'Klallam Tribal Council	1033 Old Blyn Highway Sequim, WA 98382	(360)683-1109	(360)683-4643	jamestown@olympus.net
Atcitty, Thomas	President Navajo Nation	P.O. Box 9000 Window Rock, AZ 86515	(520)871-6352	(520)871-4025	
B					
Beartusk, Keith	Area Director, Billings Area Bureau of Indian Affairs	316 N. 26th Street Billings, MT 59101	(406)247-7943	(406)247-7976	
Beaver, Perry	Principal Chief Muscogee (Creek) Nation	P.O. Box 580 Okmulgee, OK 74447	(918)756-8700	(918)756-1434	chief@ocevnet.org
Bonney, Torr	Financial Analyst Central Council Tlingit Haida	320 Willoughby Avenue Suite 300 Juneau, AK 99801	(907)463-7191		
C					
Churchill, Bernida	NCAI Vice-President Mille Lacs Band of Ojibwe	HRC-67, Box 194 Onamia, MN 56539	(320)532-7428	(320)532-7506	
Clapham, Britt	Senior Assistant Attorney General Navajo Nation	P.O. Drawer 2010 Window Rock, AZ 86515	(520)871-6345	(520)871-6177	
Cordova, Jerry	Office of Self Governance Bureau of Indian Affairs	1849 C Street, NW MS-2542 MIB Washington, DC 20240	(202)219-0240	(202)219-2201	

Name	*Title*	*Address*	*Telephone*	*Fax*	*E-Mail*
D					
Deloria, Sam	American Indian Law Center	P.O. Box 4456 Sta A Albuquerque, NM 87196	(505)277-5462		
Demoski, Peter	Tribal Administrator Nulato Tribal Council	P.O. Box 65049 Nulato, AK 99765	(907)898-2339	(907)898-2207	
Denetsone, Genni	(Acting) Area Director, Navajo Area Bureau of Indian Affairs	P.O. Box 1060 (505)863-8314 Gallup, NM 87305	(505)863-8245		
F					
Fortney, Gayle	Budget Analyst Division of Program Development and Implementation Bureau of Indian Affairs	1849 C Street, NW MS-4616 MIB Washington, DC 20240	(202)208-3640	(202)208-6635	gayle_fortney@ios.doi.gov
G					
Gay, Rick	Grants and Contracts Officer Confederated Tribes of the Umatilla Indian Reservation	P.O. Box 638 (541)278-5222 Pendleton, OR 97801	(541)276-3095		trbadmin@ucinet.com
Gover, Kevin	Assistant Secretary - Indian Affairs Bureau of Indian Affairs	1849 C Street, NW MS-4140 MIB Washington, DC 20240	(202)208-7163	(202)208-5320	
H					
Hanna, Jeanette	Budget Chief Division of Program Development and Implementation Bureau of Indian Affairs	1849 C Street, NW MS-4616 MIB Washington, DC 20240	(202)208-6181	(202)208-6635	jeanette_hanna@ios.doi.gov
Holmes, Cyndi	Self Governance Coordinator Jamestown S'Klallam Tribe	1033 Old Blyn Highway	(360)681-4612	(360)681-3405	jamestown@olympus net
Name	*Title*	*Address*	*Telephone*	*Fax*	*E-Mail*

BEST COPY AVAILABLE

Name	*Title*	*Address*	*Telephone*	*Fax*	*E-Mail*
Hughes, Michael	Consultant on Indian Affairs	P.O. Box 26540 Phoenix, AZ 85068	(602)395-1136	(602)395-1136 (Call first)	
J					
Jaeger, Ron	Area Director, Sacramento Area Bureau of Indian Affairs	2800 Cottage Way Sacramento, CA 95825	(916)979-2600 Ext. 221	(916)979-2569	
K					
Ketzler, Al Jr	Tanana Chiefs Conference Inc	122 First Avenue, Suite 600 Fairbanks, AK 99701	(907)452-8251	(907)459-3850	aketzler@tananachiefs.org
L					
Lujan, Alex	Governor Pueblo of Sandia	Box 6008 Bernalillo, NM 87004	(505)867-3317	(505)867-9235	
M					
Maddox, Deborah	Director Office of Tribal Services Bureau of Indian Affairs	1849 C Street, NW MS-4603 MIB Washington, DC 20240	(202)208-3463	(202)208-5113	deborah_j_maddox@ios.doi gov
Manuel, Hilda	Deputy Commissioner-Indian Affairs Bureau of Indian Affairs	1849 C Street, NW MS-4140 MIB Washington, DC 20240	(202)208-5116	(202)208-5320	
Martin, Tim	Executive Director United South Eastern Tribes	711 Stewarts Ferry Pike Suite 100 Nashville, TN 37214	(615)872-7900	(615)872-7417	
McDivitt, Jim	Chief of Staff Office of the Assistant Secretary Bureau of Indian Affairs	1849 C Street, NW MS-4140 MIB Washington, DC 20240	(202)208-7163	(202)208-5320	
Morrin, Larry	Area Director, Minneapolis Area Bureau of Indian Affairs	331 S. 2nd Avenue Minneapolis, MN 55401	(612)373-1000 Ext. 1020	(612)373-1186	

BEST COPY AVAILABLE

Murphy, Charles W	Chairman Standing Rock Sioux Tribal Council	P.O. Box D Fort Yates, ND 58538	(701)854-7202	(701)854-7299	
N Nordwall, Wayne	Area Director, Phoenix Area Bureau of Indian Affairs	P.O. Box 10 (602)379-6600 Phoenix, AZ 85001	(602)379-4413		
R Rainbolt, Harry	Budget Coordinator Office of Tribal Services Bureau of Indian Affairs	1849 C Street, NW MS-4603 MIB Washington, DC 20240	(202)208-3112	(202)208-5113	harry_rainbolt@ios.doi.gov
Rupnicki, Mamie	Chairperson Prairie Band of Potawatomi of Kansas	16277 Q Road (785)966-2255 Mayetta, KS 66509-8970	(785)966-2144	mrupnicki@juno.com	
S Sinclair, Bill	Director Office of Self Governance Bureau of Indian Affairs	1849 C Street, NW MS-2542 MIB Washington, DC 20240	(202)219-0240	(202)219-2201	
Speaks, Stan	Area Director, Portland Area Bureau of Indian Affairs	911 NE 11th Avenue Portland, OR 97232	(503)231-6702	(503)231-2201	
T Thomas, Mary V	Governor Gila River Indian Community	P.O. Box 97 (520)562-6000 Sacaton, AZ 85247	(520)562-3422		
Tuell, Loretta	Special Assistant and Counselor To the Assistant Secretary Office of the Assistant Secretary	1849 C Street, NW MS-4140 MIB	(202)208-7163	(202)208-5320	loretta_tuell@ios.doi.gov

Name	*Title*	*Address*	*Telephone*	*Fax*	*E-Mail*
Turner, Dennis	Chairman Southern California Tribal Chairmen's Association	P.O. Box 1470 (760)749-0910 Valley Center, CA 92082	(760)749-5615		
V Virden, Terry	Director	1849 C Street, NW	(202)208-5831	(202)219-1255	terry_virden@ios.doi.gov

BEST COPY AVAILABLE

	Office of Trust Responsibilities Bureau of Indian Affairs	MS-4513 MIB Washington, DC 20240			

W

Washakie, John	Chairman Shoshone Business Committee	P.O. Box 217 Fort Washakie, WY 82514	(307)332-3532	(307)332-4578	
Weaver, Douglas	Budget and Compliance Officer Mississippi Band of Choctaw Indians	P.O. Box 6408 Philadelphia, MS 39350	(601)650-1508	(601)650-9990	dweaver@choctaw.org